THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1996 CUMULATIVE SUPPLEMENT

Volume 18

Chapters 130 through 136

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BY

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Under the Direction of

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Annotated through 470 S.E.2d 425. For complete scope of annotations, see scope of volume page.

**Place Behind Supplement Tab in Binder Volume.
This Supersedes Previous Supplement, Which
May Be Retained for Reference Purposes.**

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Preface

This Cumulative Supplement to Volume 18 contains the general laws of a permanent nature enacted by the General Assembly through the 1996 Second Extra Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1996 Second Extra Session affecting Chapters 130 through 136 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 343, p. 303.
North Carolina Court of Appeals Reports through Volume 121, p. 513.
South Eastern Reporter 2nd Series through Volume 470, p. 425.
Federal Reporter 3rd Series through Volume 83, p. 1423.
Federal Supplement through Volume 924, p. 224.
Federal Rules Decisions through Volume 165, p. 700.
Bankruptcy Reports through Volume 195, p. 823.
Supreme Court Reporter through Volume 116, p. 1711.
North Carolina Law Review through Volume 74, p. 1319.
Wake Forest Law Review through Volume 30, p. 1008.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

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ARTICLE 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-34. Provision of local public health services.

(a) A county shall provide public health services.

(b) A county shall operate a county health department, establish a consolidated human services agency pursuant to G.S. 153A-77, participate in a district health department, or contract with the State for the provision of public health services. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7604; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1; 1971, c. 175, s. 1; 1973, c. 137, s. 1; c. 1151; 1975, c. 272; 1979, c. 621; 1983, c. 891, s. 2; 1995 (Reg. Sess., 1996), c. 690, s. 13.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in subsection (b), inserted "establish a consolidated human services agency pursuant to G.S. 153A-77", and made punctuation changes.

§ 130A-41. Powers and duties of local health director.

CASE NOTES

Quoted in Gray v. Laws, 915 F. Supp. 747 (E.D.N.C. 1994).

Part 1A. Consolidated Human Services Agency.

§ 130A-43. Consolidated human services agency; board; director.

(a) Except as otherwise provided by this section and subject to any limitations that may be imposed by the board of county commissioners under G.S. 153A-77, a consolidated human services agency created pursuant to G.S. 153A-77 shall have the responsibility to carry out the duties of a local health department and the authority to administer the local public health programs established in this Chapter in the same manner as a local health department.

(b) In addition to the powers conferred by G.S. 153A-77(d), a consolidated human services board shall have all the powers and duties of a local board of health as provided by G.S. 130A-39, except that the consolidated human services board may not:

(1) Appoint the human services director.

(2) Transmit or present the budget for local health programs.

(c) In addition to the powers conferred by G.S. 153A-77(e), a human services director shall have all the powers and duties of a local health director provided by G.S. 130A-41, except that the human services director may:

(1) Serve as the executive officer of the consolidated human services agency only to the extent and in the manner authorized by the county manager.

(2) Appoint staff of the consolidated human services agency only upon the approval of the county manager. (1995 (Reg. Sess., 1996), c. 690, s. 14.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 690, s. 17, made this part effective July 1, 1996.

ARTICLE 9.

Solid Waste Management.

Part 1. Definitions.

§ 130A-290. Definitions.

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

(1) "CERCLA/SARA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

(1a) "Chemical or portable toilet" means a self-contained mobile toilet facility and holding tank and includes toilet facilities in recreational vehicles.

(1b) "Chlorofluorocarbon refrigerant" means any of the following when used as a liquid heat transfer agent in a mechanical refrigeration system: carbon tetrachloride, chlorofluorocarbons, halons, or methyl chloroform.

(2) "Closure" means the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment.

(3) "Commercial" when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.

(4) "Construction" or "demolition" when used in connection with "waste" or "debris" means solid waste resulting solely

from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.

(5) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 1, effective October 1, 1996.

(6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(7) "Garbage" means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

(8) "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

(9) "Hazardous waste facility" means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

(10) "Hazardous waste generation" means the act or process of producing hazardous waste.

(11) "Hazardous waste disposal facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.

(12) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(13) "Hazardous waste management program" means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.

(13a) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not hazardous waste.

(14) "Inert debris" means solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.

(15) "Land-clearing debris" means solid waste which is generated solely from land-clearing activities.

(16) "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

(17) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(18) "Medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of "solid waste" in this section.

(18a) "Municipal solid waste" means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations.

(18b) "Municipal solid waste management facility" means any publicly or privately owned solid waste management facility permitted by the Department that receives municipal solid waste for processing, treatment, or disposal.

(19) "Natural resources" means all materials which have useful physical or chemical properties which exist, unused, in nature.

(20) "Open dump" means a solid waste disposal site which is not a sanitary landfill.

(21) "Operator" means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or periods of operation during any part of the day.

(22) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(23) "Processing" means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.

(24) "Recovered material" means a material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the solid waste stream for sale, use, or reuse. In order to qualify as a recovered material, a material must meet the requirements of G.S. 130A-309.05(c).

(25) "RCRA" means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.

(26) "Recyclable material" means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

(27) "Recycling" means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

(28) “Refuse” means all nonputrescible waste.

(28a) “Refuse-derived fuel” means fuel that consists of municipal solid waste from which recyclable and noncombustible materials are removed so that the remaining material is used for energy production.

(29) “Resource recovery” means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.

(30) “Reuse” means a process by which resources are reused or rendered usable.

(31) “Sanitary landfill” means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.

(32) “Septage” means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin which is removed from a wastewater system. The term septage includes the following:

a. Domestic septage, which is either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works receiving only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works receiving either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

b. Domestic treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works where the designed disposal is subsurface. Domestic treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. Domestic treatment plant septage does not include ash generated during the firing of domestic treatment plant septage in an incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

c. Grease septage, which is material pumped from grease interceptors, separators, traps, or other appurtenances used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup.

d. Industrial or commercial septage, which is material pumped from septic tanks or other devices used in the collection, pretreatment, or treatment of any water-carried waste resulting from any process of industry, manufacture, trade, or business where the design disposal of the wastewater is subsurface. Domestic septage mixed with any industrial or commercial septage is considered industrial or commercial septage.

e. Industrial or commercial treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of sewage that contains any waste resulting from any process of industry, manufacture, trade, or business in a treatment works where the designed disposal is subsurface. Industrial or commercial treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. Industrial or commercial treatment plant septage does not include ash generated during the firing of industrial or commercial treatment plant septage in an incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(33) "Septage management firm" means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community wastewater systems that treat or dispose septage.

(34) "Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.

(35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

a. Fecal waste from fowls and animals other than humans.

b. Solid or dissolved material in:

1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.
2. Irrigation return flows.
3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).

e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

f. Recovered material.

(36) "Solid waste disposal site" means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.

(37) "Solid waste generation" means the act or process of producing solid waste.

(38) "Solid waste management" means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.

(39) "Solid waste management facility" means land, personnel and equipment used in the management of solid waste.

(40) "Special wastes" means solid wastes that can require special handling and management, including white goods, whole tires, used oil, lead-acid batteries, and medical wastes.

(41) "Storage" means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

(41a) "Tire-derived fuel" means a form of fuel derived from scrap tires.

(42) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(43) "Unit of local government" means a county, city, town or incorporated village.

(44) "White goods" includes refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

(45) "Yard trash" means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

(b) Unless a different meaning is required by the context, the following definitions shall apply throughout G.S. 130A-309.15 through G.S. 130A-309.24:

(1) "Public used oil collection center" means:

a. Automotive service facilities or governmentally sponsored collection facilities, which in the course of business accept for disposal small quantities of used oil from households; and

b. Facilities which store used oil in aboveground tanks, which are approved by the Department, and which in the course of business accept for disposal small quantities of used oil from households.

(2) "Reclaiming" means the use of methods, other than those used in rerefining, to purify used oil primarily to remove insoluble contaminants, making the oil suitable for further use; the methods may include settling, heating, dehydration, filtration, or centrifuging.

(3) "Recycling" means to prepare used oil for reuse as a petroleum product by rerefining, reclaiming, reprocessing, or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil.

(4) "Rerefining" means the use of refining processes on used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefining may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(5) "Used oil" means any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and is economically recyclable.

(6) "Used oil recycling facility" means any facility that recycles more than 10,000 gallons of used oil annually. (1969, c. 899; 1975, c. 311, s. 2; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 1; 1981, c. 704, s. 4; 1983, c. 795, ss. 1, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, s. 2; 1985, c. 738, s. 1; 1987, c. 574, s. 1; 1987 (Reg. Sess., 1988), c. 1020, s. 1; c. 1058, s. 1; 1989, c. 168, s. 11; c. 742, s. 5; c. 784, s. 1; 1991, c. 342, s. 7; c. 621, s. 1; 1991 (Reg. Sess., 1992), c. 1013, s. 7; 1993, c. 173, ss. 1-3; c. 471, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 594, ss. 1-5.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 594, ss. 1, 2, 3, 4, and 5, effective October 1, 1996, repealed subdivision (a)(5), which defined "Designated local government"; added subdivision (a)(13a); inserted "industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste" in subdivision (a)(18a); in subdivision (a)(24) substituted "'Recovered material' means a material that has" for "'Recovered materials' means those materials which have", substituted "has been diverted" for "have been diverted", deleted "by separation, collection, or processing" from the end of the first sentence, and added the second sentence; and in subdivision (a)(35) added subdivision (a)(35)f. and made punctuation changes.

Part 2. Solid and Hazardous Waste Management.

§ 130A-291. Division of Waste Management.

(a) For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creation of nuisances and the depletion of our natural resources, the Department shall maintain a Division of Waste Management to promote sanitary processing, treatment, disposal, and statewide management of solid waste and the greatest possible recycling and recovery of resources, and the Department shall employ and retain qualified personnel as may be necessary to effect such purposes. It is the purpose and intent of the State to be and remain cognizant not only of its responsibility to authorize and establish a statewide solid waste management program, but also of its responsibility to monitor and supervise, through the Department, the activities and operations of units of local government implementing a permitted solid waste management facility serving a specified geographic area in accordance with a solid waste management plan.

(b) In furtherance of this purpose and intent, it is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that solid waste management facilities permitted hereunder and serving a specified geographic area shall be used by public or private owners or occupants of all lands, buildings, and premises within the geographic area, and a unit of local government may, by ordinance, require that all solid waste generated within the geographic area and placed in the waste stream for disposal, shall be delivered to the permitted solid waste management facility or facilities serving the geographic area. Actions taken pursuant to this Article shall be deemed to be acts of the sovereign power of the State of North Carolina, and to the extent reasonably necessary to achieve the purposes of this section, a unit of local government may displace competition with public service for solid waste management and disposal. It is further determined and declared that no person, firm, corporation, association or entity within the geographic area shall engage in any activities which would be competitive with this purpose or with ordinances, rules adopted pursuant to the authority granted herein. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 3; 1977, 2nd Sess., c. 1216; 1983, c. 795, ss. 2, 8.1; c. 891, s. 2; 1987, c. 574, s. 1; 1989, c. 727, s. 144; 1989 (Reg. Sess., 1990), c. 1004, ss. 7, 8; 1995 (Reg. Sess., 1996), c. 743, s. 4.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, deleted "Solid" preceding "Waste Management" in the catchline and in the first sentence of subsection (a); deleted "such" preceding "qualified personnel" in the first sentence of subsection (a); substituted "a" for "the" preceding "statewide solid waste management" in the second sentence of subsection (a); in the first sentence of subsection (b), substituted "this" for "said" preceding "purpose and intent", and substituted "the geographic" for "said" preceding "area" twice; and substituted "the" for "said" preceding "geographic area" in the first and third sentences of subsection (b).

§ 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;

(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;

(3) Develop and adopt rules to establish standards for qualification as a "recycling, reduction or resource recovering facility" or as "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;

(4)a. **(See editor's note)** Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of ½ acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. A landfill for the disposal of demolition debris generated on the same parcel or tract of land on which the landfill is located that has a disposal area of one acre or less is exempt from the permit requirement of this section and rules adopted pursuant to this section, and shall be governed by G.S. 130A-301.2. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission for Health Services, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges which are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required for the applicant to obtain a permit.

b. The issuance of permits for sanitary landfills operated by local governments is exempt from the environmental impact statements required by Article 1 of Chapter 113A of the General Statutes, entitled the North Carolina Environmental Policy Act of 1971. All sanitary landfill permits issued to local governments prior to July 1, 1984, are hereby validated notwithstanding any failure to provide environmental impact statements pursuant to the North Carolina Environmental Policy Act of 1971;

(4a) No permit shall be granted for any public or private sanitary landfill to receive solid non-radioactive waste generated outside the boundaries of North Carolina to be deposited, unless such waste has previously been inspected by the solid waste regulatory agency of that nation, state or territory, characterized in detail as to its contents and certified by that agency to be non-injurious to health and safety. The Commission shall adopt rules to implement this subsection.

(5) Repealed by Session Laws 1983, c. 795, s. 3.

(5a) Designate a geographic area within which the collection, transportation, storage and disposal of all solid waste generated within said area shall be accomplished in accordance with a solid waste management plan. Such designation may be made only after the Department has received a request from the unit or units of local government having jurisdiction within said geographic area that such designation be made and after receipt by the Department of a solid waste management plan which shall include:

a. The existing and projected population for such area;
b. The quantities of solid waste generated and estimated to be generated in such area;
c. The availability of sanitary landfill sites and the environmental impact of continued landfill of solid waste on surface and subsurface waters;
d. The method of solid waste disposal to be utilized and the energy or material which shall be recovered from the waste; and
e. Such other data that the Department may reasonably require.

(5b) Authorize units of local government to require by ordinance, that all solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, or prohibit collectors of solid waste from recycling materials or limit access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

(5c) Except for the authority to designate a geographic area to be serviced by a solid waste management facility, delegate authority and responsibility to units of local government to perform all or a portion of a solid waste management program within the jurisdictional area of the unit of local government; provided that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.

(5d) Require that an annual report of the implementation of the solid waste management plan within the designated geographic area be filed with the Department.

(6) The Department is authorized to charge and collect fees from operators of hazardous waste disposal facilities. The fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes, regulations or rules to remain responsible for post-closure monitoring and care. In establishing the fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility.

(7) Establish and collect annual fees from generators and transporters of hazardous waste, and from storage, treatment, and disposal facilities regulated under this Article as provided in G.S. 130A-294.1.

(b) The Commission shall adopt and the Department shall enforce rules to implement a comprehensive statewide solid waste management program. The rules shall be consistent with applicable State and federal law; and shall be designed to protect the public health, safety, and welfare; preserve the environment; and provide for the greatest possible conservation of cultural and natural resources. Rules for the establishment, location, operation, maintenance, use, discontinuance, recordation, post-closure care of solid waste management facilities also shall be based upon recognized public health practices and procedures, including applicable epidemiological research and studies; hydrogeological research and studies; sanitary engineering research and studies; and current technological development in equipment and methods. The rules shall not apply to the management of solid waste that is generated by an individual or individual family or household unit on the individual's property and is disposed of on the individual's property.

The Commission shall adopt rules for financial responsibility to ensure the availability of sufficient funds for closure and post-closure maintenance and monitoring at solid waste management facilities, and for any corrective action the Department may require during the active life of a facility or during the closure and post-closure periods. The rules may permit demonstration of financial responsibility through the use of a letter of credit, insurance, surety, trust agreement, financial test, or guarantee by corporate parents or third parties who can pass the financial test. The rules shall require that an owner or operator of a privately owned solid waste management facility demonstrate financial responsibility by a method or combinations of methods that will ensure that sufficient funds for closure, post-closure maintenance and monitoring, and any corrective action that the Department may require will be available during the active life of the facility, at closure, and for a period of not less than 30 years after closure even if the owner or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b1)(1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a "substantial amendment" means either:

a. An increase of ten percent (10%) or more in:
  1. The population of the geographic area to be served by the sanitary landfill;
  2. The quantity of solid waste to be disposed of in the sanitary landfill; or
  3. The geographic area to be served by the sanitary landfill.

b. A change in the categories of solid waste to be disposed of in the sanitary landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.

(2) Within 10 days after receiving an application for a permit, for the renewal of a permit, or for a substantial amendment to a permit for a sanitary landfill, the Department shall notify the clerk of the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located and, if the sanitary landfill is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed and shall file a copy of the application with the clerk. Prior to the issuance of a permit, the renewal of a permit, or a substantial amendment to a permit, the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public hearing when sufficient public interest exists. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall provide adequate notice to the public of the public hearing and shall specify the procedure to be followed at the public hearing.

(3) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government shall adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319 prior to the submittal by an applicant of an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill. A franchise granted for a sanitary landfill shall include:

a. A statement of the population to be served, including a description of the geographic area.

b. A description of the volume and characteristics of the waste stream.

c. A projection on the useful life of the landfill.

(4) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall request each local government having jurisdic-

tion over any part of the land on which the sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the renewed or substantially amended permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(c) The Commission shall adopt and the Department shall enforce rules concerning the management of hazardous waste. These rules shall establish a complete and integrated regulatory scheme in the area of hazardous waste management and shall provide for:

(1) Establishing criteria for hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous waste;

(1a) Establishing criteria for hazardous constituents, identifying the characteristics of hazardous constituents and listing particular hazardous constituents;

(2) Record-keeping and reporting by generators and transporters of hazardous waste and owners and operators of hazardous waste facilities;

(3) Proper labeling of hazardous waste containers;

(4) Use of appropriate containers for hazardous waste;

(5) A manifest system to assure that all hazardous waste is designated for treatment, storage or disposal at a hazardous waste facility to which a permit has been issued;

(6) Proper transportation of hazardous waste;

(7) Treatment, storage and disposal standards of performance and techniques to be used by hazardous waste facilities;

(8) Location, design, ownership and construction of hazardous waste facilities; provided, however, that no hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility;

(9) Plans to minimize unanticipated damage from treatment, storage or disposal of hazardous waste; and a plan or plans providing for the establishment and/or operation of one or more hazardous waste facilities in the absence of adequate approved hazardous waste facilities established or operated by any person within the State;

(10) Proper maintenance and operation of hazardous waste facilities, including requirements for ownership by any person or the State, financial responsibility (including requirements for sufficient availability of funds for facility closure and post-closure monitoring and corrective measures through the use of a letter of credit, insurance, surety, trust agreement, financial test, or financial test and corporate guarantee), training of personnel, continuity of operation and procedures for establishing and maintaining hazardous waste facilities;

(11) Monitoring by owners or operators of hazardous waste facilities;

(12) Inspection or copying of records required to be kept;

(13) Obtaining and analyzing hazardous waste samples and samples of hazardous waste containers and labels from generators and transporters and from owners and operators of hazardous waste facilities;

(14) A permit system governing the establishment and operation of hazardous waste facilities;

(15) Additional requirements as necessary for the effective management of hazardous waste;

(16) The operator of the hazardous waste disposal facility shall maintain adequate insurance to cover foreseeable claims arising from the operation of the facility. The Department shall determine what constitutes an adequate amount of insurance;

(17) The bottom of a hazardous waste disposal facility shall be at least 10 feet above the seasonal high water table and more when necessary to protect the public health and the environment; and

(18) The operator of a hazardous waste disposal facility shall make monthly reports to the board of county commissioners of the county in which the facility is located on the kinds and amounts of hazardous wastes in the facility.

(d) The Commission is authorized to adopt and the Department is authorized to enforce rules where appropriate for public participation in the consideration, development, revision, implementation and enforcement of any permit rule, guideline, information or program under this Article.

(e) Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(f) Within 10 days of receiving an application for a permit or for an amendment to an existing permit for a hazardous waste facility, the Department shall notify the clerk of the board of commissioners of the county or counties in which the facility is proposed to be located or is located and, if the facility is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed, and shall file a copy of the application with the clerk. Prior to the issuance of a permit or an amendment of an existing permit the Secretary or his designee shall conduct a public hearing in the county or in one of the counties in which the hazardous waste facility is proposed to be located or is located. The Secretary or his designee shall give notice of the hearing, and the public hearing shall be in accordance with applicable federal regulations adopted pursuant to RCRA and with Chapter 150B of the General Statutes. Where the provisions of the federal regulations and Chapter 150B of the General Statutes are inconsistent, the federal regulations shall apply.

(g) The Commission shall develop and adopt standards for permitting of hazardous waste facilities. Such standards shall be developed with, and provide for, public participation; shall be incorporated into rules; shall be consistent with all applicable federal and State law, including statutes, regulations and rules; shall be developed and revised in light of the best available scientific data; and shall be based on consideration of at least the following factors:

(1) Hydrological and geological factors, including flood plains, depth to water table, groundwater travel time, soil pH, soil

cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines, and climate;

(2) Environmental and public health factors, including air quality, quality of surface and groundwater, and proximity to public water supply watersheds;

(3) Natural and cultural resources, including wetlands, gamelands, endangered species habitats, proximity to parks, forests, wilderness areas, nature preserves, and historic sites;

(4) Local land uses;

(5) Transportation factors, including proximity to waste generators, route safety, and method of transportation;

(6) Aesthetic factors, including the visibility, appearance, and noise level of the facility;

(7) Availability and reliability of public utilities; and

(8) Availability of emergency response personnel and equipment.

(h) Rules adopted by the Commission shall be subject to the following requirements:

(1) Repealed by Session Laws 1989, c. 168, s. 20.

(2) Hazardous waste shall be treated prior to disposal in North Carolina. The Commission shall determine the extent of waste treatment required before hazardous waste can be disposed of in a hazardous waste disposal facility.

(3) Any hazardous waste disposal facility hereafter constructed in this State shall meet, at the minimum, the standards of construction imposed by federal regulations adopted under the RCRA at the time the permit is issued.

(4) No hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility.

(5) No hazardous waste disposal facility operated pursuant to Chapter 130B of the General Statutes shall be located within 25 miles of a polychlorinated biphenyl landfill facility.

(6) The following shall not be disposed of in a hazardous waste disposal facility: ignitables as defined in the RCRA, polyhalogenated biphenyls of 50 ppm or greater concentration, and free liquids whether or not containerized.

(7) Facilities for disposal or long-term storage of hazardous waste shall have at a minimum the following: a leachate collection and removal system above an artificial impervious liner of at least 30 mils in thickness, a minimum of five feet of clay or clay-like liner with a maximum permeability of 1.0×10^{-7} centimeters per second (cm/sec) below said artificial liner, and a leachate detection system immediately below the clay or clay-like liner.

(8) Hazardous waste shall not be stored at a hazardous waste treatment facility for over 90 days prior to treatment or disposal.

(9) The Commission shall consider any hazardous waste treatment process proposed to it, if the process lessens treatment cost or improves treatment over then current methods or standards required by the Commission.

(10) Prevention, reduction, recycling, and detoxification of hazardous wastes should be encouraged and promoted. Hazardous waste disposal facilities and polychlorinated biphenyl disposal facilities shall be detoxified as soon as technology which is economically feasible is available and sufficient money is available without additional appropriation.

(i) The Department shall develop a comprehensive hazardous waste management plan for the State. This plan shall be completed by July 1, 1990 and shall be revised at two-year intervals thereafter. The Department shall make recommendations to the Governor, cognizant State agencies, and the General Assembly on ways to: improve waste management; reduce the amount of waste generated; maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste which must be disposed of.

(j) The Commission may adopt rules for financial responsibility (including requirements for sufficient availability of funds for facility closure and postclosure monitoring and corrective measures, and for potential liability for sudden and nonsudden accidental occurrences), which may permit the use of insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would have been provided by insurance if insurance were the only mechanism used. Any direct or indirect parent corporation or other parent entity of the operator of a commercial hazardous waste treatment facility shall be deemed to be a guarantor of payment by the operator for closure, monitoring, and corrective measures and for liability incurred by the operator arising from the operation of the commercial hazardous waste treatment facility. The Department may provide a copy of any filing to meet the financial responsibility requirements to the State Treasurer, who shall review the filing and provide written comments on the equivalency of protection provided by the filing, including recommended changes.

(k) Each person who generates hazardous waste who is required to pay a fee under G.S. 130A-294.1, and each operator of a hazardous waste treatment facility which treats waste generated on-site who is required to pay a fee under G.S. 130A-294.1, shall submit to the Department at the time such fees are due, a written description of any program to minimize or reduce the volume and quantity or toxicity of such waste.

(*l*) Disposal of solid waste in or upon water in a manner that results in solid waste entering waters or lands of the State is unlawful. Nothing herein shall be interpreted to affect disposal of solid waste in a permitted landfill.

(m) Demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility. Such demolition debris may not be placed in the waters of the State or at or below the seasonal high water table.

(n) The Department shall encourage research and development and disseminate information on state-of-the-art means of handling and disposing of hazardous waste. The Department may establish a waste information exchange for the State.

(o) The Department shall promote public education and public involvement in the decision-making process for the siting and permitting of proposed hazardous waste facilities. The Department shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which facilities are proposed, the Department shall direct the appropriate agencies of State government to develop such relevant data as that locality shall reasonably request.

(p) The Department shall each year recommend to the Governor a recipient for a "Governor's Award of Excellence" which the Governor shall award for outstanding achievement by an industry or company in the area of waste management.

(q) The Secretary shall, at the request of the Governor and under the Governor's direction, assist with the negotiation of interstate agreements for the management of hazardous waste.

(r) The Commission for Health Services shall, in accordance with the procedures set forth in G.S. 160A-211.1 and G.S. 153A-152.1, review upon appeal specific privilege license tax rates which localities may apply to waste management facilities in their jurisdiction.

(s) The Department is authorized to enter upon any lands and structures upon lands to make surveys, borings, soundings, and examinations as may be necessary to determine the suitability of a site for a hazardous waste facility or hazardous waste disposal facility. The Department shall give 30 days' notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided, however, that the Department shall make reimbursement for any damage to such land or structures caused by such activities. This authority shall also apply to the North Carolina Hazardous Waste Management Commission. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 4; c. 764, s. 1; 1977, c. 123; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 2; c. 694, s. 2; 1981, c. 704, s. 6; 1983, c. 795, ss. 3, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 6, 7; c. 1034, s. 73; 1985, c. 582; c. 738, ss. 2, 3; 1985 (Reg. Sess., 1986), c. 1027, s. 31; 1987, c. 597; c. 761; c. 773, s. 1; c. 827, ss. 1, 250; c. 848; 1987 (Reg. Sess., 1988), c. 1111, s. 6; 1989, c. 168, ss. 15-22; c. 317; c. 727, s. 218(86); c. 742, s. 6; 1991, c. 537, s. 1; 1993, c. 86, s. 1; c. 273, s. 1; c. 365, s. 1; c. 473, ss. 1, 2; c. 501, s. 14; 1993 (Reg. Sess., 1994), c. 580, s. 1; c. 722, ss. 1, 2; 1995, c. 502, s. 1; c. 509, s. 70; 1995 (Reg. Sess., 1996), c. 594, ss. 6, 7.)

Effect of Amendments. —

Session Laws 1995 (Reg. Sess., 1996), c. 594, ss. 6 and 7, effective October 1, 1996, twice deleted "waste" preceding "'recycling, reduction or resource" in subdivision (a)(3); and in the second paragraph of subsection (b) substituted "shall adopt rules" for "may adopt rules" and added the last sentence.

CASE NOTES

County was liable to landowner for temporary taking of easement across county's landfill where regulations were promulgated under this section requiring that the facility be secured by means of gates, chains, berms, fences, and other security measures to prevent unauthorized entry. Tolbert v. County of Caldwell, 121 N.C. App. 653, 468 S.E.2d 504 (1996).

§ 130A-294.1. Fees applicable to generators and transporters of hazardous waste, and to hazardous waste storage, treatment, and disposal facilities.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 27.10, provides: "Beginning in 1997, the Department of Environment, Health and Natural Resources shall report on the generation, storage, treatment, and disposal of hazardous waste in North Carolina no more often than it is required to report under federal law or federal regulation."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Part 2A. Nonhazardous Solid Waste Management.

§ 130A-309.04. State solid waste management policy and goals.

(a) It is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills and to assist units of local government with solid waste management. In furtherance of this State policy, there is established a hierarchy of methods of managing solid waste, in descending order of preference:

(1) Waste reduction at the source;
(2) Recycling and reuse;
(3) Composting;
(4) Incineration with energy recovery;
(5) Incineration without energy recovery;
(6) Disposal in landfills.

(b) It is the policy of the State to encourage research into innovative solid waste management methods and products and to encourage regional solid waste management projects.

(c) It is the goal of this State to reduce the municipal solid waste stream, primarily through source reduction, reuse, recycling, and composting, by forty percent (40%) on a per capita basis by 30 June 2001.

(1), (2) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 8, effective October 1, 1996.

(c1) To measure progress toward the municipal solid waste reduction goal in a given year, comparison shall be made between the amount by weight of the municipal solid waste that, during the baseline year and the given year, is received at municipal solid waste management facilities and is:

(1) Disposed of in a landfill;
(2) Incinerated;
(3) Converted to tire-derived fuel; or
(4) Converted to refuse-derived fuel.

(c2) Comparison shall be between baseline and given years beginning on 1 July and ending on 30 June of the following year. The baseline year shall be the year beginning 1 July 1991 and ending 30 June 1992. However, a unit of local government may use an earlier baseline year if it demonstrates to the satisfaction of the Department that it has sufficient data to support the use of the earlier baseline year.

(c3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 8, effective October 1, 1996.

(d) In furtherance of the State's solid waste management policy, each State agency shall develop a solid waste management plan that is consistent with the solid waste management policy of the State.

(d1) It is the policy of the State to obtain, to the extent practicable, economic benefits from the recovery from solid waste and reuse of material and energy resources. In furtherance of this policy, it is the goal of the State to foster partnerships between the public and private sectors that strengthen the supply of, and demand for, recyclable and reusable materials and that foster opportunities for economic development from the recovery and reuse of materials.

(e), (f) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 8, effective October 1, 1996. (1989, c. 784, s. 2; 1991, c. 621, s. 2; 1991 (Reg. Sess., 1992), c. 1013, s. 6; 1995 (Reg. Sess., 1996), c. 594, s. 8.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "recovery" for "production" in subdivision (a)(4); substituted "without energy recovery" for "for volume reduction" in subdivision (a)(5); substituted "by forty percent (40%) on a per capita basis by 30 June 2001" for "on a per capita basis, on the following schedule" in subsection (c); deleted subdivision (c)(1), which read "Twenty-five percent (25%) by 30 June 1993"; deleted subdivision (c)(2), which read "Forty percent (40%) by 30 June 2001"; deleted subsection (c3), regarding units of local government unable to meet the municipal solid waste reduction goal; added subsection (d1); deleted subsection (e) regarding development of a comprehensive county solid waste management plan; and deleted subsection (f) regarding units of local government not participating in a county solid waste management plan.

§ 130A-309.05. Regulated wastes; certain exclusions.

(a) Notwithstanding other provisions of this Article, the following waste shall be regulated pursuant to this Part:

(1) Medical waste; and

(2) Ash generated by a solid waste management facility from the burning of solid waste.

(b) Ash generated by a solid waste management facility from the burning of solid waste shall be disposed of in a properly designed solid waste disposal area that complies with standards developed by the Department for the disposal of the ash. The Department shall work with solid waste management facilities that burn solid waste to identify and develop methods for recycling and reusing incinerator ash or treated ash.

(c) Recovered material is not subject to regulation as solid waste under this Article. In order for a material that would otherwise be regulated as solid waste to qualify as a recovered material, the Department may require any person who owns or has control over the material to demonstrate that the material meets the requirements of this subsection. In order to protect public health and the environment, the Commission may adopt rules to implement this subsection. In order to qualify as a recovered material:

(1) A majority of the recovered material at a facility shall be sold, used, or reused within one year;

(2) The recovered material or the products or by-products of operations that process recovered material shall not be discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water so that the products or by-products or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters including groundwaters, or otherwise enter the environment or pose a threat to public health and safety; and

(3) The recovered material shall not be a hazardous waste or have been recovered from a hazardous waste. (1989, c. 784, s. 2; 1995 (Reg. Sess., 1996), c. 594, s. 9.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "that burn solid waste" for "which burn solid waste" in subsection (b); in the introductory language of subsection (c) substituted "material is not subject to regulation as solid waste under this Article" for "materials are not subject to the provisions of this Part if", added the second and third sentences, added "In order to qualify as a recovered material"; in subdivision (c)(1) substituted "material at a facility shall be" for "materials at a facility are"; in subdivision (c)(2) substituted "material" for "materials", substituted "material shall not be" for "materials are not"; and in subdivision (c)(3) substituted "material shall not be a hazardous waste or have been recovered from a hazardous waste" for "materials are not hazardous waste and have not been recovered from solid waste which is defined as hazardous waste under G.S. 130A-290".

§ 130A-309.06. Additional powers and duties of the Department.

(a) In addition to other powers and duties set forth in this Part, the Department shall:

(1) Develop a comprehensive solid waste management plan consistent with this Part. The plan shall be developed in consultation with units of local government and shall be updated at least every three years. In developing the State solid waste management plan, the Department shall hold public hearings around the State and shall give notice of these public hearings to all units of local government and regional planning agencies.

(2) Provide guidance for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the State.

(3) Encourage coordinated local activity for solid waste management within a common geographical area.

(4) Provide planning, technical, and financial assistance to units of local government and State agencies for reduction, recycling, reuse, and processing of solid waste and for safe and environmentally sound solid waste management and disposal.

(5) Cooperate with appropriate federal agencies, local governments, and private organizations in carrying out the provisions of this Part.

(6) Promote and assist the development of solid waste reduction, recycling, and resource recovery programs that preserve and enhance the quality of the air, water, and other natural resources of the State.

(7) Maintain a directory of recycling and resource recovery systems in the State and provide assistance with matching recovered materials with markets.

(8) Manage a program of grants for programs for recycling and special waste management, and for programs that provide for the safe and proper management of solid waste.

(9) Provide for the education of the general public and the training of solid waste management professionals to reduce the production of solid waste, to ensure proper processing and disposal of solid waste, and to encourage recycling and solid waste reduction.

(10) Develop descriptive literature to inform units of local government of their solid waste management responsibilities and opportunities.

(11) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 10, effective October 1, 1996.

(12) Provide and maintain recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at the North Carolina Zoological Park.

(13) Identify, based on reports required under G.S. 130A-309.14 and any other relevant information, those materials in the municipal solid waste stream that are marketable in the State or any portion thereof and that should be recovered from the waste stream prior to treatment or disposal.

(14) Identify and analyze, with assistance from the Department of Commerce pursuant to G.S. 130A-309.14, components of the State's recycling industry and present and potential markets for recyclable materials in this State, other states, and foreign countries.

(b) The Department may refuse to issue a permit to an applicant who by past conduct in this State has repeatedly violated related statutes, rules, orders, or permit terms or conditions relating to any solid waste management facility and who is deemed by the Department to be responsible for the violations. For the purpose of this subdivision, an applicant includes the owner or operator of the facility, or, if the owner or operator is a business entity, the parent of the subsidiary corporation, a partner, a corporate officer or director, or a stockholder holding more than fifty percent (50%) of the stock of the corporation.

(c) The Department shall prepare by 1 March of each year a report on the status of solid waste management efforts in the State. The scope of the report shall be determined by the resources available to the Department for its preparation and, to the extent possible, shall include:

(1) A comprehensive analysis, to be updated in each report, of solid waste generation and disposal in the State projected for the 20-year period beginning on 1 July 1991.

(2) The total amounts of solid waste recycled and disposed of and the methods of solid waste recycling and disposal used during the calendar year prior to the year in which the report is published.

(3) An evaluation of the development and implementation of local solid waste management programs and county and municipal recycling programs.

(4) An evaluation of the success of each county or group of counties in meeting the municipal solid waste reduction goal established in G.S. 130A-309.04.

(5) Recommendations concerning existing and potential programs for solid waste reduction and recycling that would be appropriate for units of local government and State agencies to implement to meet the requirements of this Part.

(6) An evaluation of the markets for recycled materials and the success of State, local, and private industry efforts to enhance the markets for these materials.

(7) Recommendations to the Governor and the Environmental Review Commission to improve the management and recycling of solid waste in the State, including any proposed legislation to implement the recommendations.

(d) The Department shall prepare a report assessing the recycling industry and recyclable materials markets in the State every two years, and shall submit the report to the Environmental Review Commission on or before 1 March of even-numbered years. The report shall include information on progress in recycling polystyrene in the State. (1989, c. 784, s. 2; 1991, c. 336, s. 4; c. 621, ss. 3, 4; 1993, c. 250, s. 3; 1995 (Reg. Sess., 1996), c. 594, s. 10.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, deleted "by 1 March 1991" following "consistent with this Part" in subdivision (a)(1); inserted "local governments" in subdivision (a)(5); deleted subdivision (a)(11), which read "Conduct at least one workshop each year in each region served by a council of governments"; substituted "1 March" for "1 May" in the introductory language of subsection (c); deleted "generated" preceding "recycled and disposed of" in subdivision (c)(2); in subdivision (c)(7) substituted "Environmental Review Commission" for "General Assembly" and added "including any proposed legislation to implement the recommendations"; rewrote subsection (d); and made stylistic changes in subdivisions (a)(6), (a)(8), and (c)(6).

§ 130A-309.07. State solid waste management plan.

The State solid waste management plan shall include, at a minimum:

(1) Procedures to encourage cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate, including the establishment of joint agencies pursuant to G.S. 160A-462.

(2) Provisions for the continuation of existing effective regional resource recovery, recycling, and solid waste management facilities and programs.

(3) Planning guidance and technical assistance to counties and municipalities to aid in meeting the municipal solid waste reduction goals established in G.S. 130A-309.04.

(4) Planning guidance and technical assistance to counties and municipalities to assist the development and implementation of solid waste reduction programs.

(5) Technical assistance to counties and municipalities in determining the full cost for solid waste management as required in G.S. 130A-309.08.

(6) Planning guidance and technical assistance to counties and municipalities to assist the development and implementation of programs for alternative disposal, processing, or recycling of the solid wastes prohibited from disposal in

landfills pursuant to G.S. 130A-309.10 and for special wastes.

(7) A public education program, to be developed in cooperation with the Department of Public Instruction, units of local government, other State agencies, and business and industry organizations, to inform the public of the need for and the benefits of recycling solid waste and reducing the amounts of solid and hazardous waste generated and disposed of in the State. The public education program shall be implemented through public workshops and through the use of brochures, reports, public service announcements, and other materials.

(8) Provisions to encourage partnerships between the public and private sectors that strengthen the supply of, and demand for, recyclable materials and that foster opportunities for economic development from the recovery and reuse of materials. (1989, c. 784, s. 2; 1991, c. 621, s. 5; 1995 (Reg. Sess., 1996), c. 594, s. 11.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "to encourage" for "and requirements to ensure" in subdivision (1); substituted "solid waste reduction" for "recycling" in subdivision (4); and added subdivision (8).

§ 130A-309.08. Determination of cost for solid waste management; local solid waste management fees.

(a) Each county and each municipality shall annually determine the full cost for solid waste management within the service area of the county or municipality for the preceding year. The Commission shall establish by rule the method for units of local government to use in calculating full cost.

(b) Each municipality shall establish a system to inform, no less than once a year, residential and nonresidential users of solid waste management services within the municipality's service area of the user's share, on an average or individual basis, of the full cost for solid waste management as determined pursuant to subsection (a) of this section. Counties shall provide the information required of municipalities only to residential and nonresidential users of solid waste management services within the county's service area that are not served by a municipality. Municipalities shall include costs charged to them or to persons contracting with them for disposal of solid waste in the full cost information provided to residential and nonresidential users of solid waste management services. Counties and municipalities are encouraged to operate their solid waste management systems through use of an enterprise fund.

(c) For purposes of this section, "service area" means the area in which the county or municipality provides, directly or by contract, solid waste management services. The provisions of this section shall not be construed to require a person operating under a franchise contract or other agreement to collect or dispose of solid waste within the service area of a county or municipality to make the calculations or to establish a system to provide the information required under this section, unless such person agrees to do so as part of such franchise contract or other agreement.

(d) A county may charge fees for the collection, processing, or disposal of solid waste as provided in Article 15 of Chapter 153A of the General Statutes. A city may charge fees for the collection, processing, or disposal of solid waste as provided in Article 16 of Chapter 160A of the General Statutes.

(e), (f) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 12, effective October 1, 1996. (1989, c. 784, s. 2; 1991, c. 621, s. 6; 1995 (Reg. Sess., 1996), c. 594, s. 12.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, rewrote subsections (a) and (d); in subsection (b) deleted "Within one year after the completion of the cost determination required by subsection (a) of this section" at the beginning, substituted "charged to them or to persons" for "charges to them or persons" in the third sentence; deleted subsection (e) regarding fees for services; and deleted subsection (f) regarding grants, loans, or other aid to low income persons.

§ 130A-309.09A. Local government solid waste responsibilities.

(a) The governing board of each unit of local government shall assess local solid waste collection services and disposal capacity and shall determine the adequacy of collection services and disposal capacity to meet local needs and to protect human health and the environment. Each unit of local government shall implement programs and take other actions that it determines are necessary to address deficiencies in service or capacity required to meet local needs and to protect human health and the environment. A unit of local government may adopt ordinances governing the disposal, in facilities that it operates, of solid waste generated outside of the area designated to be served by the facility. Such ordinances shall not be construed to apply to privately operated disposal facilities located within the boundaries of the unit of local government.

(b) Each unit of local government, either individually or in cooperation with other units of local government, shall develop a 10-year comprehensive solid waste management plan. Units of local government shall make a good-faith effort to achieve the State's forty percent (40%) municipal solid waste reduction goal and to comply with the State's comprehensive solid waste management plan. Each unit of local government shall develop its solid waste management plan with public participation, including, at a minimum, one advertised public meeting. The Department shall assist units of local government in the preparation of the plan required by this subsection if the unit of local government requests assistance. Each plan shall be updated at least every three years. In order to assure compliance with this subsection, each unit of local government shall provide the Department with a copy of its current plan upon request by the Department. Each plan shall:

(1) Evaluate the solid waste stream in the geographic area covered by the plan.

(2) Include a goal for the reduction of municipal solid waste on a per capita basis by 30 June 2001 and a goal for the further reduction of municipal solid waste by 30 June 2006. The solid waste reduction goals shall be determined by the unit or units of local government that prepare the plan, and shall be determined so as to assist the State, to the

maximum extent practical, to achieve the State's forty percent (40%) municipal solid waste reduction goal as set out in G.S. 130A-309.04(c).

(3) Be designed to achieve the solid waste reduction goals established by the plan.

(4) Include a description of the process by which the plan was developed, including provisions for public participation in the development of the plan.

(5) Include an assessment of current programs and a description of intended actions with respect to the following solid waste management methods:

  a. Reduction at the source.
  b. Collection.
  c. Recycling and reuse.
  d. Composting and mulching.
  e. Incineration with energy recovery.
  f. Incineration without energy recovery.
  g. Transfer outside the geographic area covered by the plan.
  h. Disposal.

(6) Include an assessment of current programs and a description of intended actions with respect to:

  a. Education with the community and through the schools.
  b. Management of special wastes.
  c. Prevention of illegal disposal and management of litter.
  d. Purchase of recycled materials and products manufactured with recycled materials.

(7) Include a description and assessment of the full cost of solid waste management, including the costs of collection, disposal, waste reduction, and other programs, and of the methods of financing those costs.

(8) Consider the use of facilities and other resources for management of solid waste that may be available through private enterprise.

(c) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 12, effective October 1, 1996.

(d) In order to assess the progress in meeting the goal set out in G.S. 130A-309.04, each unit of local government shall report to the Department on the solid waste management programs and waste reduction activities within the unit of local government by 1 September of each year. At a minimum, the report shall include:

(1) A description of public education programs on recycling.

(2) The amount of solid waste received at municipal solid waste management facilities, by type of solid waste.

(3) The amount and type of materials from the solid waste stream that were recycled.

(4) The percentage of the population participating in various types of recycling activities instituted.

(5) The annual reduction in municipal solid waste, measured as provided in G.S. 130A-309.04.

(6) Information regarding programs and other actions implemented as part of the local comprehensive solid waste management plan.

(7) A statement of the costs of solid waste management programs implemented by the unit of local government and the methods of financing those costs.

(e) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 13, effective October 1, 1996.

(f) Each operator of a municipal solid waste management facility shall weigh all solid waste when it is received.

(g) A unit of local government that is a collector of municipal solid waste shall not knowingly collect for disposal, and the owner or operator of a municipal solid waste management facility that is owned or operated by a unit of local government shall not knowingly dispose of, any type or form of municipal solid waste that is generated within the boundaries of a unit of local government that by ordinance:

(1) Prohibits generators or collectors of municipal solid waste from disposing of that type or form of municipal solid waste.

(2) Requires generators or collectors of municipal solid waste to recycle that type or form of municipal solid waste. (1989, c. 784, s. 2; 1989 (Reg. Sess., 1990), c. 1009, s. 4; 1991, c. 621, s. 7; 1995 (Reg. Sess., 1996), c. 594, s. 13.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 594, s. 30(a), effective October 1, 1996, provides: "Each unit of local government shall adopt a resolution approving the comprehensive solid waste management plan required by G.S. 130A-309.09A, as amended by Section 13 of this act, and shall begin implementation of the plan by 1 July 1997. Units of local government that prepared a solid waste management plan pursuant to G.S. 130A-309.09A(b) prior to the date this act becomes effective may, in lieu of developing a new plan, update their existing plan to meet the requirements of G.S. 130A-309.09A(b), as amended by Section 13 of this act."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, rewrote this section.

CASE NOTES

County was liable to landowner for temporary taking of easement across county's landfill where regulations were promulgated under § 130A-294 requiring that the facility be secured by means of gates, chains, berms, fences, and other security measures to prevent unauthorized entry. Tolbert v. County of Caldwell, 121 N.C. App. 653, 468 S.E.2d 504 (1996).

§ 130A-309.09B. Local government waste reduction programs.

(a) Each unit of local government shall establish and maintain a solid waste reduction program that will enable the unit of local government to meet the local solid waste reduction goals established pursuant to G.S. 130A-309.09A(b)(2). The following requirements shall apply:

(1) Demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility, provided that demolition debris may not be placed in the waters of the State or at or below the seasonal high water table.

(2) Repealed by Session Laws 1991, c. 621, s. 8, effective July 9, 1991.

(3) Units of local government are encouraged to separate marketable plastics, glass, metal, and all grades of paper for

recycling prior to final disposal and are further encouraged to recycle yard trash and other organic solid waste into compost available for agricultural and other acceptable uses.

(b) To the maximum extent practicable, units of local government should participate in the preparation and implementation of joint waste reduction and solid waste management programs, whether through joint agencies established pursuant to G.S. 153A-421, G.S. 160A-462, or any other means provided by law. Nothing in a county's solid waste management or waste reduction program shall affect the authority of a municipality to franchise or otherwise provide for the collection of solid waste generated within the boundaries of the municipality.

(c) through (e) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 14, effective October 1, 1996.

(f) A county or counties and its or their municipalities may jointly determine, through a joint agency established pursuant to G.S. 153A-421 or G.S. 160A-462, which local governmental agency shall administer a solid waste management or waste reduction program.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 14, effective October 1, 1996. (1989, c. 784, s. 2; 1989 (Reg. Sess., 1990), c. 1009, s. 4; 1991, c. 537, s. 2; c. 621, s. 8; 1993, c. 86, s. 1; 1995 (Reg. Sess., 1996), c. 594, s. 14.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "waste reduction" for "recycling" in the catchline; rewrote the introductory language of subsection (a); in subdivision (a)(1) deleted the first sentence, which read "Construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site", deleted "such" preceding "demolition debris may not be placed"; substituted "waste reduction" for "recycling" twice in subsection (b) and in subsection (f); deleted subsection (c) regarding collection of curbside recyclable materials; deleted subsection (d) regarding consideration to profit and nonprofit organizations; deleted subsection (e) regarding joint recycling programs between counties and municipalities; and deleted subsection (g) regarding written progress reports.

§ 130A-309.09C. Additional powers of local governments; construction of this Part; effect of noncompliance.

(a) To effect the purposes of this Part, counties and municipalities are authorized, in addition to other powers granted pursuant to this Part:

(1) To contract with persons to provide resource recovery services or operate resource recovery facilities on behalf of the county or municipality.

(2) To indemnify persons providing resource recovery services or operating resource recovery facilities for liabilities or claims arising out of the provision or operation of such services or facilities that are not the result of the sole negligence of the persons providing the services or operating the facilities.

(3) To contract with persons to provide solid waste disposal services or operate solid waste disposal facilities on behalf of the county or municipality.

(b) A county or municipality may enter into a written agreement with other persons, including persons transporting solid waste, to undertake to fulfill some or all of the county's or municipality's responsibilities under this Part.

(c) Nothing in this Part shall be construed to prevent the governing board of any county or municipality from providing by ordinance or regulation for solid waste management standards which are stricter or more extensive than those imposed by the State solid waste management program and rules and orders issued to implement the State program.

(d) Nothing in this Part or in any rule adopted by any agency shall be construed to require any county or municipality to participate in any regional solid waste management until the governing board of the county or municipality has determined that participation in such a program is economically feasible for that county or municipality. Nothing in this Part or in any special or local act or in any rule adopted by any agency shall be construed to limit the authority of a municipality to regulate the disposal of solid waste located within its boundaries or generated within its boundaries so long as a facility for any such disposal has been approved by the Department, unless the municipality is included within a solid waste management program created under a joint agency or special or local act. If bonds had been issued to finance a solid waste management program in reliance on State law granting to a unit of local government, a region, or a special district the responsibility for the solid waste management program, nothing herein shall permit any governmental agency to withdraw from the program if the agency's participation is necessary for the financial feasibility of the project, so long as the bonds are outstanding.

(e) Nothing in this Part or in any rule adopted by any State agency pursuant to this Part shall require any person to subscribe to any private solid waste collection service.

(f) In the event a region, special district, or other entity by special act or joint agency, has been established to manage solid waste, any duty or responsibility or penalty imposed under this Part on a unit of local government shall apply to such region, special district, or other entity to the extent of the grant of the duty or responsibility or imposition of such penalty. To the same extent, such region, special district, or other entity shall be eligible for grants or other benefits provided pursuant to this Part.

(g) In addition to any other penalties provided by law, a unit of local government that does not comply with the requirements of G.S. 130A-309.09A(b) and G.S. 130A-309.09B(a) shall not be eligible for grants from the Solid Waste Management Trust Fund, the Scrap Tire Disposal Account, or the White Goods Management Account and shall not receive the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes or the proceeds of the white goods disposal tax imposed by Article 5C of Chapter 105 of the General Statutes to which the unit of local government would otherwise be entitled. The Secretary shall notify the Secretary of Revenue to withhold payment of these funds to any unit of local government that fails to comply with the requirements of G.S. 130A-309.09A(b) and G.S. 130A-309.09B(a). Proceeds of the scrap tire disposal tax that are withheld pursuant to this subsection shall be credited to the Scrap Tire Disposal Account and may be used as provided in G.S. 130A-309.63. Proceeds of the white goods disposal tax that are withheld pursuant to this subsection shall be credited to the White Goods Management Account and may be used as provided in G.S. 130A-309.83. (1989, c. 784, s. 2; 1989 (Reg. Sess., 1990), c. 1009, s. 4; 1991, c. 621, s. 9; 1995 (Reg. Sess., 1996), c. 594, s. 15.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, rewrote subsection (g).

§ 130A-309.09D. Responsibilities of generators of municipal solid waste owners and operators of privately owned solid waste management facilities and collectors of municipal solid waste.

(a) A generator of municipal solid waste shall not knowingly dispose of, a collector of municipal solid waste shall not knowingly collect for disposal, and the owner or operator of a privately owned or operated municipal solid waste management facility shall not knowingly dispose of, any type or form of municipal solid waste that is generated within the boundaries of a unit of local government that by ordinance:

(1) Prohibits generators or collectors of municipal solid waste from disposing of that type or form of municipal solid waste.

(2) Requires generators or collectors of municipal solid waste to recycle that type or form of municipal solid waste.

(b) On or before 1 August, the owner or operator of a privately owned solid waste management facility shall report to the Department, for the previous year beginning 1 July and ending 30 June, the amount by weight of the solid waste that was received at the facility and disposed of in a landfill, incinerated, or converted to fuel. To the maximum extent practicable, the reports shall indicate by weight the county of origin of all solid waste. The owner or operator shall transmit a copy of the report to the county in which the facility is located and to each county from which solid waste originated.

(c) A generator of industrial solid waste that owns and operates an industrial solid waste facility for the management of industrial solid waste generated by that generator shall develop a 10-year waste management plan. The plan shall be updated at least every three years. In order to assure compliance with this subsection, each generator to which this subsection applies shall provide the Department with a copy of its current plan upon request by the Department. Each generator to which this subsection applies shall file a report on its implementation of the plan required by this subsection with the Department by 1 August of each year. A generator to which this subsection applies may provide the Department with a copy of a current plan prepared pursuant to an ordinance adopted by a unit of local government or prepared for any other purpose if the plan meets the requirements of this subsection. The plan shall have the following components:

(1) A waste reduction goal established by the generator.

(2) Options for the management and reduction of wastes evaluated by the generator.

(3) A waste management strategy, including plans for waste reduction and waste disposal, for the 10-year period cov-

ered by the plan. (1991, c. 621, s. 11; 1995 (Reg. Sess., 1996), c. 594, s. 16.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 594, s. 30(b), effective October 1, 1996, provides: "A generator of industrial waste who is required to develop a solid waste management plan by G.S. 130A-309.09D(c), as enacted by Section 16 of this act, is not required to complete the plan until 1 July 1997, and is not required to file a report on the implementation of the plan with the Department of Environment, Health, and Natural Resources until 1 August 1998."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, in the catchline inserted "generators of municipal solid waste", deleted "municipal" following "privately owned", and added "and collectors of municipal solid waste" at the end; rewrote subsection (a); in subsection (b) deleted "1992 and each year thereafter" following "1 August", deleted "municipal" preceding "solid waste management", substituted "the reports" for "such reports" in the second sentence; and added subsection (c).

§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

(a) No beverage shall be sold or offered for sale within the State in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

(b) No person shall distribute, sell, or offer for sale in this State, any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons (CFC). Producers of containers or packing material manufactured with chlorofluorocarbons (CFC) are urged to introduce alternative packaging materials that are environmentally compatible.

(c)(1) No plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the bag is composed of material that is recyclable.

(2) It is the goal of the State that at least twenty-five percent (25%) of the plastic bags provided at retail outlets in the State to retail customers for carrying items purchased by the customer be recycled.

(d)(1) No person shall distribute, sell, or offer for sale in this State any polystyrene foam product that is to be used in conjunction with food for human consumption unless the product is composed of material that is recyclable.

(2) Repealed by Session Laws 1995, c. 321, s. 1, effective June 21, 1995.

(e) No person shall distribute, sell, or offer for sale in this State any rigid plastic container, including a plastic beverage container unless the container has a molded label indicating the plastic resin used to produce the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangulated arrows. The three arrows shall form an equilateral triangle with the common point of each line forming each angle of the triangle at the midpoint of each arrow and rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The label shall appear on or near the bottom of the container and be clearly visible. A container having a capacity of less than eight fluid ounces or more than five gallons is exempt from the requirements of this subsection. The numbers and letters shall be as follows:

(1) For polyethylene terephthalate, the letters "PETE" and the number 1.
(2) For high density polyethylene, the letters "HDPE" and the number 2.
(3) For vinyl, the letter "V" and the number 3.
(4) For low density polyethylene, the letters "LDPE" and the number 4.
(5) For polypropylene, the letters "PP" and the number 5.
(6) For polystyrene, the letters "PS" and the number 6.
(7) For any other, the letters "OTHER" and the number 7.

(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1, effective October 1, 1991.
(2) Used oil.
(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
(4) White goods.
(5) Antifreeze (ethylene glycol).
(6) Aluminum cans.
(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition against landfilling whole tires applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
(8) Lead-acid batteries, as provided in G.S. 130A-309.70.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:

(1) Antifreeze (ethylene glycol) used solely in motor vehicles.
(2) Aluminum cans.
(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17, effective October 1, 1996.
(4) White goods.
(5) Lead-acid batteries, as provided in G.S. 130A-309.70.

(f2) Subsection (f1) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17, effective October 1, 1996.

(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill or incineration shall not be construed as a violation of subsection (f) or (f1) of this section. (1989, c. 784, s. 2; 1991, c. 23, s. 1; c. 375, s. 1; 1991 (Reg. Sess., 1992), c.

932, ss. 1, 2; 1993, c. 290, s. 1; 1995, c. 321, s. 1; c. 504, s. 9; 1995 (Reg. Sess., 1996), c. 594, s. 17.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, deleted the last sentence of subdivision (c)(1), which read "Notice of recyclability shall be printed on each bag purchased by the retailer"; in subsection (e) in the first sentence substituted "rigid plastic container, including a plastic beverage container unless the container" for "plastic container product unless the product", substituted "container" for "plastic container product", in the sixth sentence substituted "or near the bottom of the container" for "the bottom of the plastic container product", in the seventh sentence substituted "A container" for "Plastic beverage containers", substituted "eight fluid ounces or more than five gallons is" for "16 fluid ounces, nonsolid food liquid containers having a capacity of less than 16 fluid ounces, and rigid plastic containers having a capacity of less than eight fluid ounces are"; deleted "including multi-material containers" in subdivision (e)(7); deleted "In accordance with the following schedule" from the beginning of the introductory language of subsection (f); substituted "approved for the disposal of yard trash" for "classified for such use" in subdivision (f)(3); deleted "after July 1, 1994" in subdivision (f)(6); added subdivisions (f)(7) and (f)(8); rewrote subsections (f1) and (f2); deleted subsection (g) regarding alternative disposal, processing, or recycling options; and made stylistic changes.

§ 130A-309.11. Compost standards and applications.

(a) In order to protect the State's land and water resources, compost produced, utilized, or disposed of by the composting process at solid waste management facilities in the State must meet criteria established by the Department.

(b) The Commission shall adopt rules to establish standards for the production of compost. Rules shall be adopted not later than 24 months after the initiation of rule making. Such rules shall include:

(1) Requirements necessary to produce hygienically safe compost products for varying applications.

(2) A classification scheme for compost based on:

a. The types of waste composted, including at least one type containing only yard trash;

b. The maturity of the compost, including at least three degrees of decomposition for fresh, semi-mature, and mature; and

c. The levels of organic and inorganic constituents in the compost.

(c) The compost classification scheme shall address:

(1) Methods for measurement of the compost maturity.

(2) Particle sizes.

(3) Moisture content.

(4) Average levels of organic and inorganic constituents, including heavy metals, for such classes of compost as the Department establishes, and the analytical methods to determine those levels.

(d) The Commission shall adopt rules to prescribe the allowable uses and application rates of compost. Rules shall be adopted not later than 24 months after the initiation of rule making. Such rules shall be based on the following criteria:

(1) The total quantity of organic and inorganic constituents, including heavy metals, allowed to be applied through the addition of compost to the soil per acre per year.

(2) The allowable uses of compost based on maturity and type of compost.

(e) If compost is produced which does not meet the criteria prescribed by the Department for agricultural and other use, the compost must be reprocessed or disposed of in a manner approved by the Department, unless a different application is specifically permitted by the Department. (1989, c. 784, s. 2; 1995 (Reg. Sess., 1996), c. 594, s. 18.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "The Commission shall adopt rules" for "Within six months after the effective date of this section, the Department shall initiate rule making" in subsections (b) and (d).

§ 130A-309.25. Training of operators of solid waste management facilities.

(a) The Department shall establish qualifications for, and encourage the development of training programs for, operators of incinerators, operators of landfills, coordinators of local recycling programs, and other solid waste management facilities.

(b) The Department shall work with accredited community colleges, vocational technical centers, State universities, and private institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be trained as operators of solid waste management facilities.

(c) A person may not perform the duties of an operator of a solid waste management facility after 1 January 1998, unless he has completed an operator training course approved by the Department. An owner of a solid waste management facility may not employ any person to perform the duties of an operator unless the person has completed an approved solid waste management facility operator training course.

(d) The Commission may adopt rules and minimum standards to effectuate the provisions of this section and to ensure the safe, healthy, and lawful operation of solid waste management facilities. The Commission may establish, by rule, various classifications for operators to address the need for differing levels of training required to operate various types of solid waste management facilities due to different operating requirements at the facilities.

(e) In developing training programs for incinerator operators under this section, the Department shall establish and consult with ad hoc advisory groups to help coordinate the requirements under this section with other training programs for incinerator operators. (1989, c. 784, s. 2; 1993, c. 29, s. 1; 1995 (Reg. Sess., 1996), c. 594, s. 19.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "1 January 1998" for "1 January 1996" in subsection (c).

§ 130A-309.26. Regulation of medical waste.

(a) As used in this section:

(1) "Sharps" means needles, syringes, and scalpel blades.

(2) "Treatment" means any process, including steam sterilization, chemical treatment, incineration, and other methods approved by the Commission which changes the character or composition of medical waste so as to render it noninfectious.

(b) It is the intent of the General Assembly to protect the public health by establishing standards for the safe packaging, storage, treatment, and disposal of medical waste. The Commission shall adopt and the Department shall enforce rules for the packaging, storage, treatment, and disposal of:

(1) Medical waste at facilities where medical waste is generated;

(2) Medical waste from the point at which the waste is transported from the facility where it was generated;

(3) On-site and off-site treatment of medical waste; and

(4) The off-site transport, storage, treatment or disposal of medical waste.

(c) No later than 1 August 1990, the Commission shall adopt rules necessary to protect the health, safety, and welfare of the public and to carry out the purpose of this section. Such rules shall address, but need not be limited to, the packaging of medical waste, including specific requirements for the safe packaging of sharps and the segregation, storage, treatment, and disposal of medical wastes at the facilities in which such waste is generated. (1989, c. 784, s. 2; 1995 (Reg. Sess., 1996), c. 594, s. 20.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996 substituted "treatment" for "incineration" in subdivision (b)(3).

Part 2B. Scrap Tire Disposal Act.

§ 130A-309.53. Definitions.

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) "Collection site" means a site used for the storage of scrap tires.

(2) "Disposal fee" is any amount charged by a tire collector, tire processor, or unit of local government in exchange for accepting scrap tires.

(3) "In-county scrap tire" means any scrap tire brought for disposal from inside the county in which the collection or processing site is located.

(4) "Out-of-county scrap tire" means any scrap tire brought for disposal from outside the county in which the collection or processing site is located.

(5) "Processing site" means a site actively used to produce or manufacture usable materials, including fuel, from scrap tires. Commercial enterprises processing scrap tires shall not be considered solid waste management facilities insofar as the provisions of G.S. 130A-294(a)(4) and G.S. 130A-294(b) are concerned.

(6) "Scrap tire" means a tire that is no longer suitable for its original, intended purpose because of wear, damage, or defect.

(7) "Tire" means a continuous solid or pneumatic rubber covering that encircles the wheel of a vehicle. Bicycle tires and other tires for vehicles propelled by human power are not subject to the provisions of this Part.

(8) "Tire collector" means a person who owns or operates a site used for the storage, collection, or deposit of more than 50 scrap tires.

(9) "Tire hauler" means a person engaged in the picking up or transporting of scrap tires for the purpose of storage, processing, or disposal.

(10) "Tire processor" means a person who engages in the processing of scrap tires or one who owns or operates a tire processing site.

(11) "Tire retailer" means a person who engages in the retail sale of a tire in any quantity for any use or purpose by the purchaser other than for resale. (1989, c. 784, s. 3; 1991, c. 221, s. 2; 1995 (Reg. Sess., 1996), c. 594, s. 21.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, in subdivision (7) deleted "and is subject to the tax imposed by Article 5B of Chapter 105" from the end of the first sentence and added the second sentence.

§ 130A-309.58. Disposal of scrap tires.

(a) Each county is responsible for providing for the disposal of scrap tires located within its boundaries in accordance with the provisions of this Part and any rules issued pursuant to this Part. The following are permissible methods of scrap tire disposal:

(1) Incinerating;
(2) Retreading;
(3) Constructing crash barriers;
(4) Controlling soil erosion when whole tires are not used;
(5) Chopping or shredding;
(6) Grinding into crumbs for use in road asphalt, tire derived fuel, and as raw material for other products;
(7) Slicing vertically, resulting in each scrap tire being divided into at least two pieces;
(8) Sludge composting;
(9) Using for agriculture-related purposes;
(10) Chipping for use as an oyster cultch as approved by rules adopted by the Marine Fisheries Commission;
(11) Cutting, stamping, or dyeing tires;
(12) Pyrolizing and other physico-chemical processing;
(13) Hauling to out-of-State collection or processing sites; and
(14) Monofilling split, ground, chopped, sliced, or shredded scrap tires.

(b) The Commission may adopt rules approving other permissible methods of scrap tire disposal. Landfilling of whole scrap tires is prohibited. The prohibition against landfilling whole tires applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.

(c) Units of local government may enter into joint ventures or other cooperative efforts with other units of local government for the purpose of disposing of scrap tires. Units of local government may enter into leases or other contractual arrangements with units of local government or private entities in order to dispose of scrap tires.

(d) Each county is responsible for developing a description of scrap tire disposal procedures. These procedures shall be included in any solid waste management plan required by the Department under this Article. Further, any revisions to the initial description of the scrap tire disposal procedures shall be forwarded to the Department.

(e) **(Effective until June 30, 1997)** A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may not charge a disposal fee for the disposal of scrap tires except as provided in this subsection. A unit of local government or contracting party may charge a disposal fee that does not exceed the cost of disposing of the scrap tires only if:

(1) The scrap tires are new tires that are being disposed of by their manufacturer because they do not meet the manufacturer's standards for salable tires; or

(2) The scrap tires are delivered to a local government scrap tire disposal site without an accompanying certificate required by G.S. 130A-309.58(f) that indicates that the tires originated in a county within North Carolina.

(e) **(Effective June 30, 1997)** A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires only to the extent that the cost per tire of disposal exceeds the amount received by the county under G.S. 105-187.19 during the preceding 12-month period, divided by the number of tires disposed of within the county according to the tire disposal procedures during that period. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires regardless of whether a tax has been paid on the tire under Article 5B of Chapter 105 and regardless of the tire's place of origin.

(f) Every tire retailer or other person disposing of scrap tires shall complete and sign a certification form prescribed by the Department and distributed to each county, certifying that the tires were collected in the normal course of business for disposal, the county in which the tires were collected, and the number of tires to be disposed of. This form also shall be completed and signed by the tire hauler, certifying that the load contains the same tires that were received from the tire retailer or other person disposing of scrap tires. The tire hauler shall present this certification form to the tire processor or tire collector at the time of delivery of the scrap tires for disposal, collection, or processing. Copies of these certification forms shall be retained for a minimum of three years after the date of delivery of the scrap tires.

(g) The provisions of subsection (f) of this section do not apply to tires that are brought for disposal in quantities of five or less by someone other than a tire collector, tire processor, or tire hauler. (1989, c. 784, s. 3; 1991, c. 221, s. 5; 1993, c. 548, s. 4; 1995 (Reg. Sess., 1996), c. 594, s. 22.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, added the last sentence of subsection (b).

§ 130A-309.63. (Expires June 30, 1997) Scrap Tire Disposal Account.

(a) Creation. — The Scrap Tire Disposal Account is established as a nonreverting account within the Department. The Account consists of revenue credited to the Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes.

(b) Use. — The Department may use revenue in the Account only as authorized by this section. The Department may use up to twenty-five percent (25%) of the revenue in the Account to make grants to units of local government to assist them in disposing of scrap tires. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit of local government to provide for scrap tire disposal, the severity of a unit of local government's scrap tire disposal problem, and the effort made by a unit of local government to provide for scrap tire disposal within the resources available to it.

(c) Eligibility. — A unit of local government is not eligible for a grant unless its costs for disposing of scrap tires for the six-month period preceding the date the unit of local government files an application for a grant exceeded the amount the unit of local government received during that period from the proceeds of the scrap tire tax under G.S. 105-187.19. A grant to a unit of local government may not exceed the unit of local government's unreimbursed cost for the six-month period.

(d) Cleanup of Nuisance Tire Sites. — The Department may use the remaining revenue in the Account only to clean up scrap tire collection sites that the Department has determined are a nuisance. The Department may use funds in the Account to clean up a nuisance tire collection site only if no other funds are available for that purpose.

(e) Reports. — The Department shall report annually on the Scrap Tire Disposal Account to the Environmental Review Commission. The report shall be submitted by 1 October of each year for the fiscal year ending the preceding 30 June. The report shall show the beginning and ending balances in the Account for the reporting period, the amount credited to the Account during the reporting period, and the amount of revenue used for grants and to clean up nuisance tire collection sites. (1993, c. 548, s. 6; 1995 (Reg. Sess., 1996), c. 594, s. 23.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, in subsection (e) substituted "report annually" for "make quarterly reports", added the second sentence, substituted "reporting period" for "quarter" in the third sentence, and deleted the last sentence, which read "A quarterly report shall be filed within 60 days after the end of a calendar quarter."

Part 2D. Management of Discarded White Goods.

§ 130A-309.83. (Repealed effective July 1, 1999) White Goods Management Account.

(a) The White Goods Management Account is established within the Department. The Account consists of revenue credited to the Account from the proceeds of the white goods disposal tax imposed by Article 5C of Chapter 105 of the General Statutes.

(b) The Department shall use revenue in the Account to make grants to units of local government to assist them in managing discarded white goods. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit to manage white goods, the severity of a unit's white goods management problem, and the effort made by a unit to manage white goods within the resources available to it.

(c) A unit of local government is not eligible for a grant unless its costs of managing white goods for a six-month period preceding the date the unit files an application for a grant exceeded the amount the unit received during that period from the proceeds of the white goods disposal tax under G.S. 105-187.24. The Department shall determine the six-month period to be used in determining who is eligible for a grant. A grant to a unit may not exceed the unit's unreimbursed cost for the six-month period.

(d) If a unit of local government anticipates that its costs of managing white goods during a six-month period will exceed the amount the unit will receive during that period because the unit will make a capital expenditure for the management of white goods or because the unit will incur other costs resulting from improvements to that unit's white goods management program, the unit may request that the Department make an advance determination that the costs are eligible to be paid by a grant from the White Goods Management Account and that there will be sufficient funds available in the Account to cover those costs. If the Department determines that the costs are eligible for reimbursement and that funds will be available, the Department shall reserve funds for that unit of local government in the amount necessary to reimburse allowable costs. The Department shall notify the unit of its determination and fund availability within 60 days of the request from the unit of local government. This subsection applies only to capital expenditures for the management of white goods and to costs resulting from improvements to a unit's white goods management program. (1993, c. 471, s. 4; 1995 (Reg. Sess., 1996), c. 594, s. 24.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, added the subsection (a), (b), and (c) designations, and added subsection (d).

§ 130A-309.85. (Effective until July 1, 1999) Department to submit annual report on the management of white goods.

The Department shall report annually to the Environmental Review Commission concerning the management of white goods.

§ 130A-309.85 is set out twice. See notes.

The report shall be submitted by 1 October of each year for the fiscal year ending on the preceding 30 June. The report shall include the following information:

(1) The amount of taxes collected and distributed under G.S. 105-187.24 during the period covered by the report.
(2) The cost to each county of managing white goods during the period covered by the report.
(3) The beginning and ending balances of the White Goods Management Account for the period covered by the report and a list of grants made from the Account for the period.
(4) Any other information the Department considers helpful in understanding the problem of managing white goods. (1993, c. 471, s. 4; 1995 (Reg. Sess., 1996), c. 594, s. 25.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 594, s. 25, effective October 1, 1996, in the introductory language substituted "report annually" for "make an annual report", substituted "1 October of each year for" for "October 1 of each year, shall cover", substituted "30 June" for "June 30, and", and added "The report" at the beginning of the third sentence.

§ 130A-309.85. (Effective July 1, 1999) Department to submit annual report on the management of white goods.

The Department shall report annually to the Environmental Review Commission concerning the management of white goods. The report shall be submitted by 1 October of each year for the fiscal year ending on the preceding 30 June. The report shall include the cost to each county of managing white goods during the period covered by the report, the additional fees on white goods collected by each county during the period covered by the report, and any other information the Department considers helpful in understanding the problem of managing white goods. (1993, c. 471, ss. 4, 9; 1995 (Reg. Sess., 1996), c. 594, s. 26.)

Effect of Amendments. —

Session Laws 1995 (Reg. Sess., 1996), c. 594, s. 26, effective October 1, 1996, substituted "report annually" for "make an annual report", substituted "1 October of each year for" for "October 1 of each year, shall cover", substituted "30 June" for "June 30, and", and added "The report" at the beginning of the third sentence.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 27.10, provides: "Beginning in 1997, the Department of Environment, Health and Natural Resources shall report on the generation, storage, treatment, and disposal of hazardous waste in North Carolina no more often than it is required to report under federal law or federal regulation."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

ARTICLE 11.

Wastewater Systems.

§ 130A-334. Definitions.

The following definitions shall apply throughout this Article:

(1) "Construction" means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.

(2) Repealed by Session Laws 1985, c. 462, s. 18.

(2a) "Industrial process wastewater" means any water-carried waste resulting from any process of industry, manufacture, trade, or business.

(3) "Location" means the initial placement for occupancy of a residence, place of business or place of public assembly.

(3a) "Maintenance" means normal or routine maintenance including replacement of broken pipes, cleaning, or adjustment to an existing wastewater system.

(4), (5) Repealed by Session Laws 1985, c. 462, s. 18.

(6) "Place of business" means a store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building or any other place where people work.

(7) "Place of public assembly" means a fairground, auditorium, stadium, church, campground, theater or any other place where people assemble.

(7a) "Plat" means a property survey prepared by a registered land surveyor, drawn to a scale of one inch equals no more than 60 feet, that includes: the specific location of the proposed facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters. "Plat" also means, for subdivision lots approved by the local planning authority and recorded with the county register of deeds, a copy of the recorded subdivision plat that is accompanied by a site plan that is drawn to scale.

(7b) "Pretreatment" means any biological, chemical, or physical process or system for improving wastewater quality and reducing wastewater constituents prior to final treatment and disposal in a subsurface wastewater system and includes, but is not limited to aeration, clarification, digestion, disinfection, filtration, separation, and settling.

(8) "Public or community wastewater system" means a single system of wastewater collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility.

(9) "Relocation" means the displacement of a residence or place of business from one site to another.

(9a) "Repair" means the extension, alteration, replacement, or relocation of existing components of a wastewater system.

(10) "Residence" means a private home, dwelling unit in a multiple family structure, hotel, motel, summer camp,

labor work camp, manufactured home, institution or any other place where people reside.

(11) Repealed by Session Laws 1992, c. 944, s. 3, effective July 14, 1992.

(12) "Septic tank system" means a subsurface wastewater system consisting of a settling tank and a subsurface disposal field.

(13) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.

(13a) "Site plan" means a drawing not necessarily drawn to scale that shows the existing and proposed property lines with dimensions, the location of the facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters.

(14) "Wastewater" means any sewage or industrial process wastewater discharged, transmitted, or collected from a residence, place of business, place of public assembly, or other places into a wastewater system.

(15) "Wastewater system" means a system of wastewater collection, treatment, and disposal in single or multiple components, including a privy, septic tank system, public or community wastewater system, wastewater reuse or recycle system, mechanical or biological wastewater treatment system, any other similar system, and any chemical toilet used only for human waste. (1973, c. 452, s. 4; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 462, s. 18; c. 487, s. 9; 1987, c. 435; 1991, c. 256, s. 1; 1991 (Reg. Sess., 1992), c. 944, s. 3; c. 1028, s. 4; 1995, c. 285, s. 1; 1995 (Reg. Sess., 1996), c. 585, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 27.31(a), (b).)

Editor's Note. — The subdivision designations (7a) and (7b) were redesignated at the direction of the Revisor of Statutes, the definition of "Plat" having been enacted as subdivision (7b).

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

Session Laws 1995 (Reg. Sess., 1996), c. 585, s. 1, effective June 20, 1996, and applicable to all applications filed on or after that date, added the definitions of "Plat" and "Site plan."

Session Laws 1996, Second Extra Session, c. 18, ss. 27.31(a) and 27.31(b), effective August 3, 1996, and applicable to all applications for permits filed on or after that date, added the last sentence of subdivision (7a); and in subdivision (13a) inserted "not necessarily drawn to scale," and inserted "the existing and proposed property lines with dimensions."

§ 130A-335. Wastewater collection, treatment and disposal; rules.

(a) A person owning or controlling a residence, place of business or a place of public assembly shall provide an approved wastewater system. A wastewater system may include components for collection, treatment and disposal of wastewater.

(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

(1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(c) A wastewater system subject to approval under rules of the Commission shall be reviewed and approved under rules of a local board of health in the following circumstances:

(1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning wastewater systems; and

(2) The local board of health has adopted by reference the wastewater system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public health; and

(3) The Department has found that the rules of the local board of health concerning wastewater collection, treatment and disposal systems are at least as stringent as rules adopted by the Commission and are sufficient and necessary to safeguard the public health.

(d) The Department may, upon its own motion, upon the request of a local board of health or upon the request of a citizen of an affected county, review its findings under subsection (c) of this section.

The Department shall review its findings under subsection (c) of this section upon modification by the Commission of the rules applicable to wastewater systems. The Department may deny, suspend, or revoke the approval of local board of health wastewater system rules upon a finding that the local wastewater rules are not as stringent as rules adopted by the Commission, are not sufficient and necessary to safeguard the public health, or are not being enforced. Suspension and revocation of approval shall be in accordance with G.S. 130A-23.

(e) The rules of the Commission and the rules of the local board of health shall address at least the following: Wastewater characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation, operation, maintenance and performance of wastewater collection, treatment and disposal systems; Soil morphology and drainage; Topography and landscape position; Depth to seasonally high water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject to frequent flooding, streams, lakes, swamps and other bodies of surface or groundwaters; Density of wastewater collection, treatment and disposal systems in a geographical area; Requirements for issuance, suspension and revocation of permits; and Other factors which affect the effective operation and performance of wastewater collection, treatment and disposal systems. The rules regarding required design capacity and required design volume for wastewater systems shall provide that exceptions may be granted upon a showing that a system is adequate to meet actual daily water consumption.

(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit.

(f1) A preconstruction conference with the owner or developer, or an agent of the owner or developer, and a representative of the local health department shall be required for any authorization for wastewater system construction issued with an improvement permit under G.S. 130-336 when the authorization is greater than five years old. Following the conference, the local health department shall issue a revised authorization for wastewater system construction that includes current technology that can reasonably be expected to improve the performance of the system.

(g) Prior to denial of an improvement permit, the local health department shall advise the applicant of possible site modifications or alternative systems, and shall provide a brief description of those systems. When an improvement permit is denied, the local health department shall issue the site evaluation in writing stating the reasons for the unsuitable classification. The evaluation shall also inform the applicant of the right to an informal review by the Department, the right to appeal under G.S. 130A-24, and to have the appeal held in the county in which the site for which the improvement permit was requested is located.

(h) Except as provided in this subsection, a chemical or portable toilet may be placed at any location where the chemical or portable toilet can be operated and maintained under sanitary conditions. A chemical or portable toilet shall not be used as a replacement or substitute for a water closet or urinal where a water closet or urinal connected to a permanent wastewater treatment system is required by the North Carolina State Building Code, except that a chemical or portable toilet may be used to supplement a water closet or urinal during periods of peak use. A chemical or portable toilet shall not be used as an alternative to the repair of a water closet, urinal, or wastewater treatment system. It shall be unlawful to discharge sewage or other waste from a chemical or portable toilet used for human waste except into a wastewater system that has been approved by the Department under rules adopted by the Commission or by the Environmental Management Commission or at a site that is permitted by the Department under G.S. 130A-291.1. (1957, c. 1357, s. 1; 1973, c. 471, s. 1; c. 476, s. 128; c. 860; 1977, c. 857, s. 1; 1979, c. 788, s. 2; 1981, c. 949, s. 3; c. 1127, s. 47; 1983, c. 891, s. 2; 1987, c. 267, ss. 1, 2; 1989, c. 727, s. 147; c. 764, ss. 6, 7; 1989 (Reg. Sess., 1990), c. 1075, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 4; 1993, c. 173, s. 5; 1995, c. 285, s. 1; 1995 (Reg. Sess., 1996), c. 585, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 27.31(c).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

Session Laws 1995 (Reg. Sess., 1996), c. 585, s. 2, effective June 20, 1996, and applicable to all applications filed on or after that date, in subsection (f), in the fourth sentence substituted "Permits other than improvement permits" for "The permits" and substituted "rule" for "the rules, except that improvement"; in the fifth sentence added "Improvement" at the beginning and deleted "without expiration" preceding "upon a showing satisfactory"; and added the sixth and seventh sentences.

Session Laws 1996, Second Extra Session, c. 18, s. 27.31(c), effective August 3, 1996, and applicable to all applications for permits filed on or after that date, in the last sentence of subsection (f), substituted "The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes" for "A statement," and deleted "that states that the permit is subject to revocation if site plans or the intended use change" from the end.

CASE NOTES

Preliminary Soil Evaluation. — Where the rules of the Commission for Health Services did not provide for nor prohibit the use of preliminary soil evaluations, local sanitarian was enforcing the rules of the Commission when it conducted such an evaluation. Cates v. North Carolina Dep't of Justice, 121 N.C. App. 243, 465 S.E.2d 64 (1996).

§ 130A-336. Improvement permit and authorization for wastewater system construction required.

(a) Any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system shall be evaluated by the local health department in accordance with rules adopted pursuant to this Article. An improvement permit shall be issued in compliance with the rules adopted pursuant to this Article. An improvement permit shall include:

(1) For permits that are valid without expiration, a plat or, for permits that are valid for five years, a site plan.
(2) A description of the facility the proposed site is to serve.
(3) The proposed wastewater system and its location.

(4) The design wastewater flow and characteristics.
(5) The conditions for any site modifications.
(6) Any other information required by the rules of the Commission.

The improvement permit shall not be affected by change in ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

(b) The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with this Article and rules adopted pursuant to this Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement permit, not to exceed five years, and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the Department or the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction.

(c) Unless the Commission otherwise provides by rule, plans, and specifications for all wastewater systems designed for the collection, treatment, and disposal of industrial process wastewater shall be reviewed and approved by the Department prior to the issuance of an authorization for wastewater system construction by the local health department.

(d) If a local health department repeatedly fails to issue or deny improvement permits for conventional septic tank systems within 60 days of receiving completed applications for the permits, then the Department of Environment, Health, and Natural Resources may withhold public health funding from that local health department. (1973, c. 452, s. 5; c. 476, s. 128; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 273; 1991, c. 256, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 5; 1995, c. 285, s. 1; 1995 (Reg. Sess., 1996), c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 27.31(d)-(f).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

Session Laws 1995 (Reg. Sess., 1996), c 585, s. 3, effective June 20, 1996, and applicable to all applications filed on or after that date, rewrote subsection (a).

Session Laws 1996, Second Extra Session, c. 18, ss. 27.31(d), 27.31(e), and 27.31(f), effective August 3, 1996, and applicable to all applications for permits filed on or after that date, added "and its location" at the end of subdivision (a)(3); substituted "equal to the period of validity of the improvement permit, not to exceed five years" for "of five years" in subsection (b); and added subsection (d).

ARTICLE 16.

Postmortem Investigation and Disposition.

Part 1. Postmortem Medicolegal Examinations and Services.

§ 130A-382. County medical examiners; appointment; term of office; vacancies.

CASE NOTES

Cited in Epps v. Duke Univ., Inc., 122 N.C. App. 198, 468 S.E.2d 846 (1996).

Part 3. Uniform Anatomical Gift Act.

§ 130A-410. Use of tissue declared a service; standard of care; burden of proof.

CASE NOTES

Personal Jurisdiction over Organ Procurement Organization. — Under the Uniform Anatomical Gift Act the procurement of organs is expressly considered a service, and where out-of-state organ procurement organization was responsible for the transportation of a kidney to the destination of a recipient member of organ procurement network, packaged and shipped the kidney to North Carolina so that its service was not complete until the kidney was delivered to this State, and directly billed a North Carolina entity for its services, the exercise of jurisdiction over the organ procurement organization pursuant to § 1-75.4(5)(a) was proper. Slaughter v. Life Connection, 907 F. Supp. 929 (M.D.N.C. 1995).

Chapter 130B.

Hazardous Waste Management Commission.

Sec.
130B-5. Powers and duties of the Governor.
130B-7. Powers and duties of the Commission.
130B-16. Fees.
130B-22. Inter-Agency Committee on Hazardous Waste.

§ 130B-5. Powers and duties of the Governor.

(a) No hazardous waste facility shall be established pursuant to this Chapter unless the Governor determines that such facility is essential and is in the best interests of the State. Such determination shall be based on a periodic review of current and projected hazardous waste generation from all sources within the State, the current and projected effect of efforts to minimize and reduce the generation of hazardous waste, the potential for further reductions in the generation of hazardous waste, current and projected availability and adequacy of facilities for the management of hazardous waste within and outside the State, whether and to what extent private enterprise will provide needed hazardous waste facilities, capacity assurance requirements under CERCLA/SARA, the extent to which agreements can be negotiated for the management of hazardous waste outside the State, and the extent to which the State should obligate itself to provide facilities for the management of hazardous waste generated outside the State. The Governor shall take into consideration the comprehensive waste management plan developed pursuant to G.S. 130A-294(i) in making any determination under this subsection. Such determination shall be made in writing and shall specify the functions, technologies, and design capacities of the hazardous waste facility to be established.

(b) With respect to each hazardous waste facility to be established pursuant to this Chapter the Governor shall:

(1) Authorize the establishment of the facility as provided in subsection (a) of this section;

(2) Approve and modify as necessary a schedule for selection of the preferred and alternate sites for the facility;

(3) Approve and modify as necessary a schedule for the development of the facility; and

(4) Approve the technology and design capacity of each component of the facility.

(c) The Governor is authorized to enter into interstate agreements for the management of hazardous waste. Such agreements shall provide for access to suitable facilities for management of hazardous waste; encourage reductions in the volume or quantity and toxicity of hazardous waste; distribute the costs, benefits, and obligations of hazardous waste management equitably among the party states; and provide for protection of human health and the environment in a manner that is both ecologically and economically sound. In negotiating such agreements, the Governor may request such assistance as he deems appropriate from the Attorney General, the Division of Waste Management of the Department, and the Commission. The Governor shall submit any such agreement to the General Assembly for its approval, and no such agreement shall be effective until approved by the General Assembly. (1989, c. 168, s. 1; 1993, c. 501, s. 18; 1995 (Reg. Sess., 1996), c. 743, s. 5.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted "Division of Waste Management" for "Solid Waste Management Division" in subsection (c).

§ 130B-7. Powers and duties of the Commission.

(a) To carry out the purposes of this Chapter, the Commission:

(1) Shall (i) with the assistance of the Division of Waste Management of the Department, periodically review current and projected hazardous waste generation from all sources within the State, the current and projected effect of efforts to minimize and reduce the generation of hazardous waste, the potential for further reductions in the generation of hazardous waste, current and projected availability and adequacy of facilities for the management of hazardous waste within and outside the State, whether and to what extent private enterprise will provide needed hazardous waste facilities, and capacity assurance requirements under CERCLA/SARA, (ii) determine whether additional facilities for the management of hazardous waste may be needed in this State, and (iii) make appropriate recommendations to the Governor and the General Assembly;

(2) Shall, at the request of the Governor and under his direction, assist with the negotiation of interstate agreements for the management of hazardous waste;

(3) Shall determine the sequence of tasks required to be accomplished in order to site, design, finance, construct, and place into operation each authorized hazardous waste facility, determine the time likely to be required to accomplish those tasks, develop a proposed schedule for the development of each such facility and submit such schedule to the Governor for approval, and estimate the resources required to accomplish those tasks and submit such estimate to the Governor and the General Assembly;

(4) Shall site, design, finance, construct, and operate authorized hazardous waste facilities;

(5) Shall adopt, consistent with the rules of the Commission for Health Services and pursuant to Chapter 150B of the General Statutes, rules specifying the criteria and procedures for evaluating alternative locations for, and siting of, hazardous waste facilities;

(6) May employ consultants and contractors to provide services including site selection, design, construction, operation, closure, and perpetual care of hazardous waste facilities, necessary, desirable, or convenient to carry out the purposes of this Chapter, and to fix and pay their compensation;

(7) May acquire by deed, purchase, lease, contract, gift, devise, condemnation, or otherwise, any real or personal property, structures, rights-of-way, franchises, easements, and other interests in land which is necessary and convenient for the construction or operation of hazardous waste facilities, upon such terms and conditions as it deems advisable, hold,

mortgage, pledge, or otherwise encumber the same, and lease, sell, convey, or otherwise dispose of the same in such manner as may be necessary or desirable to carry out the purposes of this Chapter;

(8) May exercise the powers of a body corporate, including the power to sue and be sued, and may adopt and use a common seal and alter the same as may be deemed expedient;

(9) May make all necessary contracts and arrangements with other officials or agencies in this State and other states, including compact commissions, for any of the purposes of this Chapter;

(10) Shall establish an office or offices for the transaction of its business at such place or places as, in the opinion of the Commission, shall be advisable or necessary in carrying out the purposes of this Chapter;

(11) May create and operate any divisions it deems necessary or useful;

(12) Shall pay all costs of the formation and organization of the Commission, and incident to its administration and operation, and may pay all other costs necessary in carrying out the purposes of this Chapter;

(13) May develop and implement schedules of fees and other charges, including user charges, penalties, and surcharges applicable to hazardous waste facilities operated by the Commission;

(14) Shall make recommendations to the Governor as to the technology, design capacity, operational features, and post-closure requirements of authorized hazardous waste facilities, and shall implement such recommendations upon approval by the Governor;

(15) Shall pay, or assure that permittees and operators pay, all applicable taxes and fees;

(16) May apply for, accept, and expend loans and grants of money from any federal or State agency or any political subdivision thereof, from a compact commission, or from any other public or private source for any of the purposes authorized by this Chapter, and to give any evidences of indebtedness as may be required. Except as may hereafter be authorized by the General Assembly, no indebtedness of any kind incurred or created by the Commission shall constitute an indebtedness of the State or any of its political subdivisions, and no such indebtedness shall involve or be secured by the faith, credit, or taxing power of the State or any of its political subdivisions. At no time may the total outstanding indebtedness of the Commission, excluding bond indebtedness, exceed a total of five hundred thousand dollars ($500,000) without prior approval of the Governor, after receiving the advice of the Advisory Budget Commission;

(17) May issue revenue bonds from time to time pursuant to the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, and such bonds may be sold at public or private sale pursuant to G.S. 159-123;

(18) Shall, if it elects to issue bonds, select and retain, subject to approval of the Local Government Commission, financial

consultants, underwriters, and bond attorneys to assist with the issuance of such bonds and to pay for services rendered;

(19) May pledge revenues from hazardous waste facilities to the benefit of bondholders, or for other purposes necessary to secure financing;

(20) Shall make such plans, surveys, studies, and investigations as may be necessary or desirable with respect to the acquisition, development, and use of real property and the design, construction, operation, closure, and long-term care of hazardous waste facilities;

(21) Shall receive all field data, charts, maps, tracings, laboratory test data, soil and rock samples, and such other records as the Commission deems appropriate, collected or produced by its employees, contractors, or consultants pursuant to siting, operating, or closing of hazardous waste facilities. All such data and materials shall become the property of the State and shall not be disposed of except in accordance with G.S. 132-3 except that soil and rock samples may be subjected to tests and reduced in volume for purposes of storage in a manner approved by the Commission. The Commission may enter into agreements with other State agencies for the purpose of storage and preservation of data and materials;

(22) May procure and keep in force adequate insurance or otherwise provide for the indemnification of itself and its members, officers, agents, employees, and the general public against loss or liability resulting from any act or omission by or on behalf of the Commission, and for the protection of its property, provided that procurement of insurance by the Commission shall not be deemed a waiver of any immunity from liability otherwise available under any provision of law;

(23) May adopt bylaws for the regulation of its affairs and the conduct of its business;

(24) May adopt rules, in accordance with the provisions of Chapter 150B of the General Statutes, with respect to any of its powers and duties; and

(25) May do anything else necessary to carry out the purposes of this Chapter not otherwise prohibited by law. (1989, c. 168, s. 1; 1993, c. 501, s. 20; 1995 (Reg. Sess., 1996), c. 743, s. 6.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted "Division of Waste Management" for "Solid Waste Management Division" in subdivision (a)(1).

§ 130B-16. Fees.

(a) It is the intent of the General Assembly that all costs associated with the development of hazardous waste facilities pursuant to this Chapter be borne by the waste generators served by such facilities. The General Assembly recognizes that the extent to which costs can be passed to hazardous waste generators is determined in part by market forces, since hazardous waste facilities must operate in a competitive market. In establishing and revising schedules of fees, the Commission shall seek to secure the greatest possible revenue for the State and units of local government consistent with environmentally safe and economically sound facility operation. In establishing and revising schedules of fees, the Commission may seek to encourage reductions in the volume or quantity and toxicity of hazardous waste. For facilities which it operates, the Commission shall establish, and revise as necessary, schedules of fees and other charges, including user charges, penalties, and surcharges. For facilities which are operated by private enterprise pursuant to this Chapter, the Commission shall establish, and revise as necessary, schedules of franchise fees. The terms and conditions under which facilities are operated by private enterprise pursuant to this Chapter shall be governed by appropriate contracts between the Commission and the private operators. Such contracts shall provide for the payment of franchise fees and for the periodic adjustment thereof.

(b) In establishing and revising schedules of fees the Commission shall consider and shall seek to recover to the maximum extent possible, the following costs:

(1) Establishment and operation of the Commission;
(2) Reimbursement of State agencies for costs incurred on behalf of the Commission or in support of its activities, including the costs of any services performed pursuant to G.S. 130B-15;
(3) Establishment and administration of the Long-Term Care Fund under G.S. 130B-17;
(4) Repayment to the State with interest at rates which are equal to those set by the State Treasurer with respect to savings certificates and certificates of deposit, at the varying rates applicable for the period between expenditures and repayment, of all funds expended from the General Fund to develop hazardous waste facilities pursuant to this Chapter;
(5) Funding of the State's share of the costs associated with any interstate agreement or compact for hazardous waste management to which the State may become a party;
(6) Compensation of contractors and consultants employed by the Commission;
(7) Other expenses incurred by the Commission, the State or its agencies in furtherance of the purposes of this Chapter; and
(8) Compensation of any property owner for any loss in value of property directly resulting from the siting or operation of a hazardous waste facility.

(c) In the event that revenues exceed all costs set out in subsection (b) of this section and all other costs and charges for which the Commission is liable, such excess funds shall be paid into the General Fund. It is the intent of the General Assembly that such excess funds be appropriated for the following purposes:

(1) Funding of a portion of the State's share of the costs for remediation of inactive hazardous sites under Part 3 of Article 9 of Chapter 130A of the General Statutes and under CERCLA/SARA; and
(2) Funding of a portion of the cost of the Pollution Prevention Pays Program, the waste minimization program administered by the Technical Assistance and Support Unit of the Division of Waste Management of the Department, other

programs which foster multimedia waste prevention, reduction, reuse, and recycling, and programs which provide assistance to small quantity generators.

(d) The Commission shall prepare, on a quarterly basis, a detailed financial statement showing its current fee schedules, income from all sources, indebtedness, and expenses for the quarter and fiscal year to date. This statement, and any other information regarding the operation or activities of the Commission which may be requested, shall be submitted to the chairmen of the House and Senate committees on Finance and Appropriations, the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, the Research Division, and the Fiscal Research Division of the General Assembly.

(e) An operator of a hazardous waste facility may serve as the collection agent for the Commission, in which case, funds collected by the operator shall be transferred to the Commission on a timely basis, and deposited with the State Treasurer, as directed by the Commission.

(f) All Commission accounts shall be audited pursuant to the provisions of Article 5A of Chapter 147 of the General Statutes. (1989, c. 168, s. 1; 1995 (Reg. Sess., 1996), c. 743, s. 7.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted "Division of Waste Management" for "Solid Waste Management Division" in subsection (c)(2).

§ 130B-22. Inter-Agency Committee on Hazardous Waste.

(a) To assist the Commission in the performance of its responsibilities under this Chapter and to advise the General Assembly, there is created the Inter-Agency Committee on Hazardous Waste (herein called the "Committee"). The members shall be: the Secretary or the Secretary's designee; the Director of the Division of Waste Management of the Department or his designee; the Chief of the Hazardous Waste Management Section of the Division of Waste Management or his designee; one additional representative of the Division of Waste Management with expertise in CERCLA/SARA capacity assurance requirements appointed by the Director of the Division, the Chairman of the Commission or his designee; one additional member of the Commission appointed by the Chairman of the Commission; the Executive Director of the Commission; the Director of the Pollution Prevention Pays Program; four representatives of the Department of Environment, Health, and Natural Resources with expertise in geology, groundwater, water quality, and air quality; the representative of the Attorney General's office who provides legal services to the Commission; and a representative of the Attorney General's office who provides legal services to the Division of Waste Management designated by the Director of the Division of Waste Management with the approval of the Attorney General. The Secretary or the Secretary's designee shall serve as the Chairman of the Committee, and the Division of Waste Management of the Department shall provide professional and clerical support to the Committee.

(b) The purpose of the Committee is to share information and coordinate efforts in the siting, design, financing, permitting, construction, and operation of hazardous waste facilities.

(c) The Committee shall report to the Governor, the General Assembly, and the Research and Fiscal Research Divisions of the General Assembly from time to time regarding any changes in the present law it may deem appropriate to expedite siting, design, financing, permitting, construction, and operation of hazardous waste facilities. Such reports shall not be subject to review by the departments, agencies, boards, or commissions from whose membership the Committee is drawn. Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation made by the Committee may be introduced and considered during any session of the General Assembly.

(d) Consistent with existing law, each department, agency, board, or commission from whose membership the Committee is drawn shall be responsible for any expenses incident to the participation of its members in the work of the Committee, including per diem, travel, and subsistence, from funds otherwise appropriated to it. (1989, c. 168, s. 1; c. 727, s. 218(87); 1993, c. 501, s. 26; 1995 (Reg. Sess., 1996), c. 743, s. 8.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted "Division of Waste Management" for "Solid Waste Management Division" throughout subsection (a).

Chapter 131A.

Health Care Facilities Finance Act.

Sec.
131A-2. Legislative findings.
131A-21. Tax exemption.

§ 131A-2. Legislative findings.

It is hereby declared to be the policy of the State of North Carolina to promote the public health and welfare by providing means for financing, refinancing, acquiring, constructing, equipping and providing of health care facilities to serve the people of the State and to make accessible to them modern and efficient health care facilities.

The General Assembly hereby finds and declares that:

(1) There is a need to overcome existing and anticipated physical and technical obsolescence of existing health care facilities and to provide additional modern and efficient health care facilities in the State; and

(2) Unless measures are adopted to alleviate such need, the shortage of such facilities will become increasingly more urgent and serious; and

(3) In order to meet such shortage and thereby promote the public health and welfare of the people of the State, it is necessary for the State to assist in the providing of adequate modern and efficient health care facilities in the State so that health and hospital care and services may be expanded, improved and fostered to the fullest extent practicable..

The General Assembly hereby further finds and declares that the financing, refinancing, acquiring, constructing, equipping and providing of health care facilities are public uses and public purposes and that enactment of this Chapter is necessary and proper for effectuating the purposes hereof. (1975, c. 766, s. 1; 1993, c. 553, s. 42.)

§ 131A-3. Definitions.

Cross References. — As to the definition of "Long-term care facility" in the Long-Term Care Ombudsman Program, see § 143B-181.16.

§ 131A-21. Tax exemption.

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and welfare, and no tax or assessment shall be levied upon any health care facilities undertaken by the Commission prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Commission in connection with such health care facilities.

Any bonds or notes issued by the Commission under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1975, c. 766, s. 1; 1995, c. 46, s. 12.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the second paragraph, in the first sentence, deleted "their transfer and the income therefrom (including any profit made on the sale thereof)" following "Chapter" and added "income taxes on the gain from the transfer of the bonds and notes, and franchise taxes" to the end, and added the last sentence.

Chapter 131D.

Inspection and Licensing of Facilities.

Article 3.

Adult Care Home Residents' Bill of Rights.

Sec.
131D-34. Penalties; remedies.
131D-36 through 131D-39. [Reserved.]

Article 5.

Miscellaneous Provisions.

Sec.
131D-40. (See editor's note for effective date). Criminal history record checks required for certain applicants for employment.
131D-41 through 131D-45. [Reserved.]

ARTICLE 3.

Adult Care Home Residents' Bill of Rights.

§ 131D-34. Penalties; remedies.

(a) Violations Classified. — The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility's licensee which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) "Type A Violation" means a violation by a facility's licensee of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5000) for each Type A Violation.

(2) "Type B Violation" means a violation by a facility's licensee of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to two hundred fifty dollars ($250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, that is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility's licensee has failed to correct a Type A Violation, the Department shall assess the facility's licensee a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(2) Where a facility's licensee has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the facility's licensee a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(3) The Department shall impose a civil penalty on a facility's licensee which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the management, ownership, or control of that same licensee:

a. Has received a citation and paid a fine, or

b. Has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty,

for violating the same specific provision of a statute or regulation for which the facility's licensee received a citation during the previous six months or within the time period of the previous licensure inspection, whichever time period is longer. The counting of the six-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;

(3) The number and type of previous violations committed by the licensee;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any facility's licensee which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility's licensee wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the

Department mails a notice of penalty to a licensee. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department of Human Resources under this section shall commence on the day the violation began.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility's licensee:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility's licensee for Type B violations except those violations that have been previously cited against the long-term care facility's licensee during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

(1) A licensed pharmacist;

(2) A registered nurse experienced in long-term care;

(3) A representative of a nursing home;

(4) A representative of an adult care home; and

(5) Two public members. One shall be a "near" relative of a nursing home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. One shall be a "near" relative of a rest home resident chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. For purposes of this subdivision, a "near" relative is a spouse, sibling, parent, child, grandparent, or grandchild.

Neither the pharmacist, nurse, nor public members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or adult care home.

Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee. (1987, c. 600, s. 3; 1989, c. 556, s. 1; 1991, c. 66, s. 1; c. 572, s. 3;

1993, c. 390, s. 4; 1993 (Reg. Sess., 1994), c. 698, s. 1; 1995, c. 535, s. 16; 1995 (Reg. Sess., 1996), c. 602, s. 1.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in the first sentence of subdivision (b)(3), inserted "on a facility's licensee" following "civil penalty", substituted "management, ownership, or control of that same licensee" for "same management, ownership, or control", and substituted "the facility's licensee" for "it" following "regulation for which"; substituted "its" for "the" following "the Department in" in subdivision (b)(3)b.; substituted "resident" for "patient" in the third sentence of subdivision (h)(5); and substituted "facility's licensee" for "facility" throughout the section.

§§ 131D-36 through 131D-39: Reserved for future codification purposes.

ARTICLE 5.

Miscellaneous Provisions.

§ 131D-40. (See editor's note for effective date). Criminal history record checks required for certain applicants for employment.

(a) Requirement. — An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. An adult care home shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home is confidential and may not be disclosed.

(b) Action. — If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the administrator of the adult care home or the administrator's designee shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.

§ 131D-40 has a delayed effective date. See notes.

(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the administrator or the administrator's designee.

(c) Limited Immunity. — An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the home to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. — As used in this section, "relevant offense" means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. (1995 (Reg. Sess., 1996), c. 606, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 606, s. 5, as amended by Session Laws 1995 (Reg. Sess., 1996), c. 742, s. 42.2, made this article effective January 1, 1997, except that the requirements imposed by this article on home care agencies become effective January 1, 1998, and this article is applicable to applicants who apply for employment on or after the appropriate effective date.

§§ 131D-41 through 131D-45: Reserved for future codification purposes.

Chapter 131E.

Health Care Facilities and Services.

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Public Hospitals.

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131E-265. (See editor's note for effective date) Criminal history record checks required for certain applicants for employment.
131E-266 through 131E-270. [Reserved.]

ARTICLE 2.

Public Hospitals.

Part A. Municipal Hospitals.

§ 131E-6. Definitions.

CASE NOTES

Cited in Hospital Corp. v. Iredell County, 120 N.C. App. 445, 462 S.E.2d 675 (1995).

§ 131E-7. General powers.

(a) A municipality shall have all the powers necessary or convenient to carry out the purposes of this Part, including the following powers, which are in addition to the powers granted elsewhere in this Part:

(1) To construct, equip, operate, and maintain hospital facilities;
(2) To levy property taxes pursuant to G.S. 153A-149 or G.S. 160A-209 and to allocate those and other revenues whose use is not otherwise restricted by law to fund hospital facilities; a hospital district may levy annually a tax on property having a situs in the district under the rules and according to the procedures prescribed in the Machinery Act, Chapter 105 of the General Statutes, Subchapter II, and a hospital district may allocate those and other revenues whose use is not otherwise restricted by law to fund hospital facilities;
(3) To issue bonds and notes pursuant to the Local Government Finance Act, Chapter 159 of the General Statutes, for the financing of hospital facilities;
(4) To use property owned or controlled by the municipality;
(5) To acquire real or personal property, including existing hospital facilities, by purchase, grant, gift, devise, lease, condemnation, or otherwise;
(6) To establish a fee schedule for services received from hospital facilities and to make services available regardless of ability to pay.

(b) A municipality or a public hospital may contract with or enter into any arrangement with other public hospitals or municipalities of this or other states, the State of North Carolina, federal, or public agencies, or with any person, private organization, or nonprofit corporation or association for the provision of health care. The municipality or public hospital may pay for or contribute its share of the cost of any such contract or arrangement from revenues available for these purposes, including revenues rising from the provision of health care.

(c) Any two or more municipalities may enter into agreements to jointly exercise the powers, privileges, and authorities granted by this Part. These agreements may provide for:

(1) The appointment of a board, composed of representatives of the parties to the agreement, to supervise and manage a hospital facility;
(2) The authority and duties of the board and the compensation of its members;
(3) The proportional share of the costs of acquisition, construction, improvement, maintenance, or operation of hospital facilities;
(4) The duration, amendment, and termination of the agreement and the disposition of property on termination of the agreement; and
(5) Any other matters as necessary.

(d) A municipality may lease any hospital facility, or part, to a nonprofit association on terms and conditions consistent with the purposes of this Part. The municipality will determine the length of the lease. No lease executed under this subsection shall be deemed to convey a freehold interest.

(e) A municipality shall not sell nor convey any rights of ownership the municipality has in any hospital facility, including the buildings, land and equipment associated with the hospital, to any corporation or other business entity operated for profit, except that nothing herein shall prohibit the sale of surplus buildings, surplus land or surplus equipment by a municipality to any corporation or other business entity operated for profit.

A municipality may lease any hospital facility, or part, to any corporation, foreign or domestic, authorized to do business in North Carolina on terms and conditions consistent with the purposes of this Part and with G.S. 160A-272. The municipality shall determine the length of the lease; however, no lease under this subsection shall be longer than 10 years, including options to renew or extend the original term of the lease, except that leases of surplus buildings, surplus land or surplus equipment may be for any length of time determined by the municipality. The lease shall provide that the hospital facility will be operated as a community general hospital open to the general public and that the lessee will accept Medicare and Medicaid patients. No lease executed under this subsection shall be deemed to convey a freehold interest. No bonds, notes nor other evidences of indebtedness shall be issued by a municipality to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

For purposes of this subsection, "surplus" means any building, land or equipment which is not required for use in the delivery of necessary health care services by a hospital facility at the time of the sale, conveyance of ownership rights, or lease.

This subsection shall not be construed to affect any pending litigation nor to reflect any legislative intent as to any prior authorized or executed agreements. This subsection shall be effective from January 1, 1984 until June 30, 1984.

(f) In addition to the general and special powers conferred by this Part, a municipality is authorized to exercise powers necessary to implement the powers under this Part. (1983, c. 775, s. 1; 1993, c. 529, s. 5.3; 1995, c. 509, s. 71.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted a period for a semicolon at the end of subdivision (a)(6).

§ 131E-7.1. Public hospitals' managed care development authorized.

A public hospital as defined in G.S. 159-39(a) may acquire an ownership interest, in whole or in part, in a nonprofit or for-profit managed care company, including a health maintenance organization, physician hospital organization, physician organization, management services organization, or preferred provider organization with which the public hospital is also directly or indirectly a contracting provider. Ownership interest may be evidenced by the ownership or acquired by the purchase of stock. This ownership or acquisition of stock is the exercise of a health care function and is not the investment of idle funds within the meaning of G.S. 159-30 and G.S.159-39(g). (1995 (Reg. Sess., 1996), c. 713, s. 1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 713, s. 4, made this section effective upon ratification. The Act was ratified June 21, 1996.

§ 131E-8. Sale of hospital facilities to nonprofit corporations.

Local Modification. — Richmond: 1995 (Reg. Sess., 1996), c. 597, s. 1.

Cross References. — For section regarding lease or sale of hospital facilities to for-profit corporations by municipalities and hospital authorities, see § 131E-13. For section regarding the lease or sale of hospital facilities to nonprofit corporations, see § 131E-14.

§ 131E-9. Governing authority of hospital facilities.

Local Modification. — Johnston Memorial Hospital: 1995, c. 221, s. 1.

§ 131E-13. Lease or sale of hospital facilities to for-profit corporations by municipalities and hospital authorities.

Cross References. — For section regarding sale of hospital facilities to nonprofit corporations, see § 131E-8.

CASE NOTES

Hospital Facility. — Agency which provided health care for persons in their homes and hospitals consisted of a license, equipment and office space, and was a hospital facility within the meaning of subsection (d). Hospital Corp. v.

Iredell County, 120 N.C. App. 445, 462 S.E.2d 675 (1995).

§ 131E-14. Lease or sale of hospital facilities to certain nonprofit corporations.

Cross References. — For section regarding sale of hospital facilities to nonprofit corporations, see § 131E-8.

Part B. Hospital Authority.

§ 131E-16. Definitions.

As used in this Part, unless otherwise specified:

(1) "Board of county commissioners" means the legislative body charged with governing the county.

(2) "Bonds" means any bonds or notes issued by the hospital authority pursuant to this Part and the Local Government Finance Act, Chapter 159 of the General Statutes.

(3) "City" means any city or town which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(4) "City clerk" and "mayor" means the clerk and mayor, respectively, of the city, or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(5) "City council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city or town.

(6) "Commissioner" means one of the members of a hospital authority appointed in accordance with the provisions of this Part.

(7) "Community general hospital" means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(8) "Contract" means any agreement of a hospital authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(9) "Corporation, foreign or domestic, authorized to do business in North Carolina" means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(10) "County" means the county which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(11) "County clerk" and "chairman of the board of county commissioners" means the clerk and chairman, respec-

tively, of the county or the officers thereof charged with the duties customarily imposed on the clerk and chairman, respectively.

(12) "Federal government" means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.

(13) "Government" means the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(14) "Hospital authority" means a public body and a body corporate and politic organized under the provisions of this Part.

(15) "Hospital facilities" means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.

(16) "Municipality" means any county, city, town or incorporated village, other than a city as defined above, which is located within or partially within the territorial boundaries of an authority.

(17) "Real property" means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(18) "State" means the State of North Carolina. (1943, c. 780, s. 3; 1971, c. 780, s. 22; c. 799; 1983, c. 775, s. 1; 1995, c. 535, s. 19.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care homes" for "domiciliary homes" in subdivision (15).

§ 131E-18. Commissioners.

Local Modification. — Pasquotank: 1995 (Reg. Sess. 1996), c. 567, s. 1 (expires July 31, 2000).

For additional local modifications to this section, see the main pamphlet.

§ 131E-23. Powers of the authority.

(a) An authority shall have all powers necessary or convenient to carry out the purposes of this Part, including the following powers, which are in addition to those powers granted elsewhere in this Part:

(1) To investigate hospital, medical, and health conditions and the means of improving those conditions;

(2) To determine where inadequate hospital and medical facilities exist;

(3) To accept donations or money, personal property, or real estate for the benefit of the authority and to take title to the same from any person, firm, corporation or society;

(4) To acquire by purchase, gift, devise, lease, condemnation, or otherwise any existing hospital facilities;

(5) To purchase, lease, obtain options upon, or otherwise acquire any real or personal property or any interest therein from any person, firm, corporation, city, county, or government;

(6) To sell, exchange, transfer, assign, or pledge any real or personal property or any interest therein to any person, firm, corporation, city, county or government;

(7) To own, hold, clear and improve property;

(8) To borrow money upon its bonds, notes, debentures, or evidences of indebtedness, as provided for in G.S. 131E-26 and G.S. 131E-27;

(9) To purchase real or personal property pursuant to G.S. 131E-32;

(10) To appoint an administrator of a hospital facility and necessary assistants, and any and all other employees necessary or advisable, to fix their compensation, to adopt necessary rules governing their employment, and to remove employees;

(11) To delegate to its agents or employees any powers or duties as it may deem appropriate;

(12) To employ its own counsel and legal staff;

(13) To adopt, amend and repeal bylaws for the conduct of its business;

(14) To enter into contracts for necessary supplies, equipment, or services for the operation of its business;

(15) To appoint committees or subcommittees as it shall deem advisable, to fix their duties and responsibilities, and to do all things necessary in connection with the construction, repair, reconstruction, management, supervision, control and operation of the authority's business;

(16) To establish procedures for health care providers to secure the privilege of practicing within any hospital operated by the authority pursuant to Part B of Article 5 of this Chapter;

(17) To establish reasonable rules governing the conduct of health care providers while on duty in any hospital operated by the facility pursuant to Part B of Article 5 of this Chapter;

(18) To provide for the construction, reconstruction, improvement, alteration or repair of any hospital facility, or any part of a facility;

(19) To enter into any contracts or other arrangements with any municipality, other public agency of this or any other State or of the United States, or with any individual, private organization, or nonprofit association for the provision of hospital, clinical, or similar services;

(20) Subject to subsection (c), to lease any hospital facilities to or from any municipality, other public agency of this or any other state or of the United States, or to any individual, corporation, or association upon any terms and subject to any conditions as may carry out the purposes of this Part. Subject to subsection (c), the authority may provide for the lessee to use, operate, manage and control the hospital facilities, and to exercise designated powers, in the same manner as the authority itself might do;

(21) To act as an agent for the federal, State or local government in connection with the acquisition, construction, operation or management of a hospital facility, or any part thereof;

(22) To arrange with the State, its subdivisions and agencies, and any county or city, to the extent it is within the scope of their respective functions,

  (a) To cause the services customarily provided by each to be rendered for the benefit of the hospital authority,

  (b) To furnish, plan, replan, install, open or close streets, roads, alleys, sidewalks or similar facilities and to acquire property, options or property rights for the furnishing of property or services for a hospital facility, and

  (c) To provide and maintain parks and sewage, water and other facilities for hospital facilities and to lease and rent any of the dwellings or other accommodations or any of the lands, buildings, structures or facilities embraced in any hospital facility and to establish and revise the rents and charges;

(23) To insure the property or the operations of the authority against risks as the authority may deem advisable;

(24) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which trustees, guardians, executors, administrators, and others acting in a fiduciary capacity may legally invest funds under their control;

(25) To sue and be sued;

(26) To have a seal and to alter it at pleasure;

(27) To have perpetual succession;

(28) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(29) To remove vehicles parked on land owned or leased by the hospital authority in areas clearly designated as no parking or restricted parking zones. An owner of a removed vehicle as a condition of regaining possession of the vehicle, shall reimburse the hospital authority for all reasonable costs, not to exceed fifty dollars ($50.00), incidental to the removal and storage of the vehicle provided that the designation of the area as a no parking or restricted parking zone clearly indicates that the owner may be subject to these costs;
(30) To plan and operate hospital facilities;
(31) To provide teaching and instruction programs and schools for medical students, interns, physicians, nurses, technicians and other health care professionals;
(32) To provide and maintain continuous resident physician and intern medical services;
(33) To adopt, amend and repeal rules and regulations governing the admission of patients and the care, conduct, and treatment of patients;
(34) To establish a fee schedule for services received from hospital facilities and make the services available regardless of ability to pay;
(35) To maintain and operate isolation wards for the care and treatment of mental, contagious, or other similar diseases;
(36) To sell a hospital facility pursuant to G.S. 131E-8 or G.S. 131E-13; and
(37) To agree to limitations upon the exercise of any powers conferred upon the hospital authority by this Part in connection with any loan by a government.

(b) A hospital authority may exercise any or all of the powers conferred upon it by this Part, either generally or with respect to any specific hospital facility or facilities, through or by designated agents, including any corporation or corporations which are or shall be formed under the laws of this State.

(c) Repealed by Session Laws 1983, c. 775, s. 1, effective June 30, 1984.

(d) No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to a hospital authority unless otherwise specified by the General Assembly. (1913, c. 42, s. 15; 1917, c. 268; C.S., s. 7273; 1983, c. 775, s. 1; 1995, c. 509, s. 135.1(l).)

Editor's Note. — Subsection (c), which expired effective June 30, 1984, allowed a hospital authority to only sell surplus land, buildings or equipment for profit and allowed a hospital authority to lease any hospital facility or part to a corporation authorized to do business in North Carolina.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, inserted "or G.S. 131E-13" in subdivision (a)(36).

§ 131E-28. Tax exemptions.

(a) Hospital authorities shall be exempt from the payment of taxes or fees to the State or any of its subdivisions, or to any officer or employee of the State or any of its subdivisions.

(b) Hospital authority property used for public purposes shall be exempt from all local and municipal taxes and for the purposes of this tax exemption, an authority shall be deemed to be a municipal corporation.

(c) Bonds, notes, debentures, or other evidences of indebtedness of a hospital authority issued under the Local Government Revenue Bond Act, Chapter 159 of the General Statutes, Article 5, or issued pursuant to the bond and revenue anticipation provisions of Chapter 159 of the General Statutes, Article 9, or issued pursuant to G.S. 131E-26(b) or contracted pursuant to G.S. 131E-32 shall at all times be free from taxation by the State or any of its subdivisions, except for inheritance or gift taxes, income taxes on the gain from the transfer of the instruments, and franchise taxes. The interest on the instruments is not subject to taxation as income. (1943, c. 780, s. 21; 1971, c. 799; 1973, c. 695, s. 6; 1977, c. 268; 1983, c. 775, s. 1; 1995, c. 46, s. 13.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995 and applicable to obligations issued on or after that date, in subsection (c), in the first sentence, deleted "and the transfer of and income from such instruments, including any profits on sales" following "G.S. 131E-32" and added "income taxes on the gain from the transfer of the instruments, and franchise taxes" to the end, and added the last sentence.

ARTICLE 5.

Hospital Licensure Act.

§ 131E-76. Definitions.

As used in this article, unless otherwise specified:

(1) "Commission" means the North Carolina Medical Care Commission.

(2) "Governing body" means the Board of Trustees, Board of Directors, partnership, corporation, association, person or group of persons who maintain and control the hospital. The governing body may or may not be the owner of the properties in which the hospital services are provided.

(3) "Hospital" means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, and adult care homes licensed under G.S. 131D-2.

(4) "Infirmary" means a unit of a school, or similar educational institution, which has the primary purpose to provide limited short-term health and nursing services to its students.

(5) "Medical review committee" means a committee of a State or local professional society, of a medical staff of a licensed hospital or a committee of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of, or necessity for hospitalization or health care, including medical staff credentialing.

(6) "Primary care hospital" means a hospital which has been designated as a primary care hospital by the North Carolina Department of Human Resources, Office of Rural Health and Resource Development. To be designated as a primary care hospital under this subdivision, the hospital must be located in a rural community, provide primary care inpatient services that do not include inpatient surgery, and provide outpatient services which may include outpatient surgery. A primary care hospital shall have a maximum annual average daily census of 15 patients and may have psychiatric and long-term care distinct part units. A primary care hospital must be part of a rural hospital network.

(7) "Rural hospital network" means an alliance of members that shall include at least one primary care hospital and one other hospital. To qualify as a rural hospital network, the members must submit a comprehensive, written memorandum of understanding to the Department of Human Resources for the Department's approval. The memorandum of understanding must include provisions for patient referral and transfer, a plan for network-wide emergency services, and a plan for sharing patient information and services between hospital members including medical staff credentialing, risk management, quality assurance, and peer review. (1947, c. 933, s. 6; 1949, c. 920, s. 1; 1955, c. 369; 1961, c. 51, s. 1; 1973, c. 476, s. 152; 1983, c. 775, s. 1; 1985, c. 589, s. 41; 1993, c. 321, s. 245; 1995, c. 535, s. 20.)

Editor's Note. —

Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care homes" for "domiciliary homes" in subdivision (3).

Part F. Confidential Information.

§ 131E-97.1. Confidentiality of personnel information.

(a) Except as provided in subsection (b) of this section, the personnel files of employees or former employees, and the files of applicants for employment maintained by a public hospital as defined in G.S. 159-39 or maintained by a hospital that has been sold or conveyed pursuant to G.S. 131E-8 are not public records as defined by Chapter 132 of the General Statutes.

(b) The following information with respect to each employee of a public hospital, as defined by G.S. 159-39, is a matter of public record: name; age; date of original employment or appointment;

beginning and ending dates, position title, position descriptions, and total compensation of current and former positions; and date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification. In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public hospital shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists.

(c) Information regarding the qualifications, competence, performance, character, fitness, or conditions of appointment of an independent contractor who provides health care services under a contract with a public hospital as defined in G.S. 159-39, or with a hospital which has been sold or conveyed pursuant to G.S. 131E-8, is not a public record as defined by Chapter 132 of the General Statutes. Information regarding a hearing or investigation of a complaint, charge, or grievance by or against an independent contractor who provides health care services under a contract with a public hospital as defined in G.S. 159-39 or with a hospital which has been sold or conveyed pursuant to G.S. 131E-8, is not a public record as defined by Chapter 132 of the General Statutes. Final action making an appointment or discharge or removal by a public hospital having final authority for the appointment or discharge or removal shall be taken in an open meeting, unless otherwise exempted by law. The following information with respect to each independent contractor of health care services of a public hospital, as defined by G.S. 159-39, is a matter of public record: name; age; date of original contract; beginning and ending dates; position title; position descriptions; and total compensation of current and former positions; and the date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification. (1993 (Reg. Sess., 1994), c. 570, s. 10; 1995, c. 99, s. 1; c. 509, s. 135.2(q).)

Effect of Amendments. — Session Laws 1995, c. 99, s. 1, effective May 23, 1995, added subsection (c).

Session Laws 1995, c. 509, s. 135.2(q), effective July 29, 1995, inserted "or maintained by a hospital that has been sold or conveyed pursuant to G.S. 131E-8" in subsection (a).

§ 131E-97.2. Confidentiality of credentialing information.

Information acquired by a public hospital, as defined in G.S. 159-39, a hospital that has been sold or conveyed pursuant to G.S. 131E-8, a State-owned or State-operated hospital, or by persons acting for or on behalf of a hospital, in connection with the credentialing and peer review of persons having or applying for privileges to practice in the hospital is confidential and is not a public record under Chapter 132 of the General Statutes; provided that information otherwise available to the public shall not become confidential merely because it was acquired by the hospital or by persons acting for or on behalf of the hospital. (1993 (Reg. Sess., 1994), c. 570, s. 10; 1995, c. 509, s. 135.2(r).)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "a hospital that has been sold or conveyed pursuant to G.S. 131E-8" for "or by" following "G.S. 159-39".

§ 131E-99. (See editor's note for expiration date). Confidentiality of health care contracts.

The financial terms or other competitive health care information in a contract related to the provision of health care between a hospital and a managed care organization, insurance company, employer, or other payer is confidential and not a public record under Chapter 132 of the General Statutes. (1995 (Reg. Sess., 1996), c. 713, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 713, s. 4, made this section effective upon ratification. The Act was ratified June 21, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 713, s. 4 provides that s. 2 of that act, which added this section, shall not affect any litigation pending as of the effective date of s. 2 [June 21, 1996], and that this section expires June 1, 1997.

ARTICLE 6.

Health Care Facility Licensure Act.

Part A. Nursing Home Licensure Act.

§ 131E-101. Definitions.

As used in this Part, unless otherwise specified:

(1) "Adult care home", as distinguished from a nursing home, means a facility operated as a part of a nursing home and which provides residential care for aged or disabled persons whose principal need is a home with the shelter or personal care their age or disability requires. Medical care in an adult care home is usually occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Continuing planned medical and nursing care to meet the resident's needs may be provided under the direct supervision of a physician, nurse, or home health agency. Adult care homes are to be distinguished from nursing homes subject to licensure under this Part.

(1a) "Combination home" means a nursing home offering one or more levels of care, including any combination of skilled nursing, intermediate care, and adult care home.

(2) "Commission" means the North Carolina Medical Care Commission.

(3) "Community advisory committee" means a nursing home advisory committee established for the statutory purpose of working to carry out the intent of the Nursing Home Patients' Bill of Rights (Chapter 131E, Article 6, Part B) in accordance with G.S. 143B-181.1.

(4) Repealed by Session Laws 1995, c. 535, s. 21, effective October 1, 1995.

(5) "Medical review committee" means a committee of a State or local professional society, of a medical staff of a licensed hospital, of physicians having privileges within the nursing home or of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of or necessity for health care services under applicable federal statutes.

(6) "Nursing home" means a facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A "nursing home" is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A 'nursing home' provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

(7) "Peer review committee" means any committee appointed in accordance with G.S. 131E-108, "Peer review." (1961, c. 51, s. 3; 1981, c. 833; 1983, c. 775, s. 1; 1995, c. 535, s. 21.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Subdivisions (1) and (1a) were redesignated at the direction of the Revisor of Statutes, the original designations having been (4) and (1).

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care home" for "domiciliary home" in subdivisions (1) and (4); in subdivision (4), in the first sentence substituted "shelter" for "sheltered", in the second sentence, substituted "an adult care home" for "a domiciliary home", in the fourth sentence substituted "adult care homes" for "domiciliary homes", and deleted the last sentence which read "The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults."

§ 131E-104. Rules and enforcement.

(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part.

(b) The Commission shall adopt rules for the operation of the adult care portion of a combination home that are equal to the rules adopted by the Social Services Commission for the operation of freestanding adult care homes. The adult care portion of a combination home in existence on January 1, 1982, shall be exempt from physical plant minimum standards, unless the Department determines the exemption to be an imminent hazard to health, safety and welfare of the residents.

(c) The Department shall enforce the rules adopted or amended by the Commission with respect to nursing homes. (1961, c. 51, s. 3; 1973, c. 476, s. 128; 1981, c. 614, s. 1; 1983, c. 775, s. 1; 1995, c. 535, s. 22.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, in subsection (b), substituted "adult care" for "domiciliary" in the first and second sentences, and in the first sentence substituted "adult care homes" for "domiciliary homes".

§ 131E-105. Inspections.

(a) The Department shall inspect any nursing home and any adult care home operated as a part of a nursing home in accordance with rules adopted by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department, when necessary for investigating compliance with this Part or rules promulgated by the Commission, may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the facility being inspected unless that patient objects in writing to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communications between physician and patient," or any other rules of law, if the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information which is provided without malice or fraud to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, "'Public records' defined." Prior to releasing any information or allowing any inspections referred to in this subsection, the patient must upon admission be advised in writing by the facility that the patient has the right to object in writing to the release of information or review of the records and that by an objection in writing the patient may prohibit the inspection or release of the records.

(c) Authorized representatives of the Department with identification to this effect shall have at all times the right of proper entry upon any and all parts of the premises of any place in which entry is necessary to carry out the provisions of this Part or the rules adopted by the Commission. It shall be unlawful for any person to resist a proper entry by an authorized representative upon any premises other than a private dwelling. (1981, c. 586, s. 1; c. 614, s. 1; 1983, c. 775, s. 1; 1995, c. 535, s. 23.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care home" for "domiciliary home" in subsection (a).

§ 131E-106. Evaluation of residents in adult care homes.

The Department shall prescribe the method of evaluation of residents in the adult care portion of a combination home in order to determine when any of these residents is in need of professional medical and nursing care as provided in licensed nursing homes. (1963, c. 859; 1981, c. 833; 1983, c. 775, s. 1; 1995, c. 535, s. 24.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care homes" for "domiciliary homes" in the catchline and substituted "adult care" for "domiciliary".

§ 131E-111: Recodified as § 131E-255 by Session Laws 1995 (Reg. Sess., 1996), c. 713, s. 3(a), as amended by Session Laws 1995 (Reg. Sess., 1996), c. 713, s. 3(b), effective June 21, 1996.

Part B. Nursing Home Patients' Bill of Rights.

§ 131E-115. Legislative intent.

It is the intent of the General Assembly to promote the interests and well-being of the patients in nursing homes and adult care homes licensed pursuant to G.S. 131E-102, and patients in a nursing home operated by a hospital which is licensed under Article 5 of Chapter 131E of the General Statutes. It is the intent of the General Assembly that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the patient in the fullest possible exercise of these rights. (1977, c. 897, s. 1; 1983, c. 143, s. 2; c. 775, s. 1; 1995, c. 509, s. 72; c. 535, s. 25.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — Session Laws 1995, c. 509, s. 72, effective July 29, 1995, substituted "Chapter 131E of the General Statutes" for "G.S. Chapter 131E" in the first sentence.

Session Laws 1995, c. 535, s. 25, effective October 1, 1995, substituted "adult care homes" for "homes for the aged and disabled" in the first sentence.

§ 131E-128. Nursing home advisory committees.

(a) It is the purpose of the General Assembly that community advisory committees work to maintain the intent of this Part within the nursing homes in this State, including nursing homes operated by hospitals licensed under Article 5 of G.S. Chapter 131E. It is the further purpose of the General Assembly that the committees promote community involvement and cooperation with nursing homes and an integration of these homes into a system of care for the elderly.

(b)(1) A community advisory committee shall be established in each county which has a nursing home, including a nursing home operated by a hospital licensed under Article 5 of G.S. Chapter 131E, shall serve all the homes in the county, and shall work with each home in the best interest of the persons residing in each home. In a county which has one, two, or three nursing homes, the committee shall have five members. In a county with four or more nursing homes, the committee shall have one additional member for each nursing home in excess of three.

(2) In each county with four or more nursing homes, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each nursing home in the county. Each member must serve on at least one subcommittee.

(3) Each committee shall be appointed by the board of county commissioners. Of the members, a minority (not less than one-third, but as close to one-third as possible) must be chosen from among persons nominated by a majority of the chief administrators of nursing homes in the county and of the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes. If the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes fail to make a nomination within 45 days after written notification has been sent to them by the board of county commissioners requesting a nomination, these appointments may be made by the board of county commissioners without nominations.

(c) Each committee member shall serve an initial term of one year. Any person reappointed to a second or subsequent term in the same county shall serve a three-year term. Persons who were originally nominees of nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, or who were appointed by the board of county commissioners when the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes failed to make nominations, may not be reappointed without the consent of a majority of the nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S.

Chapter 131E, which operate nursing homes within the county. If the nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes fail to approve or reject the reappointment within 45 days of being requested by the board of county commissioners, the commissioners may reappoint the member if they so choose.

(d) Any vacancy shall be filled by appointment of a person for a one-year term. Any person replacing a member nominated by the chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes or a person appointed when the chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes failed to make a nomination shall be selected from among persons nominated by the administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, as provided in subsection (b). If the county commissioners fail to appoint members to a committee, or fail to fill a vacancy, the appointment may be made or vacancy filled by the Secretary or the Secretary's designee no sooner than 45 days after the commissioners have been notified of the appointment or vacancy if nomination or approval of the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes is not required. If nominations or approval of the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes is required, the appointment may be made or vacancy filled by the Secretary or the Secretary's designee no sooner than 45 days after the commissioners have received the nomination or approval, or no sooner than 45 days after the 45-day period for action by the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes.

(e) The committee shall elect from its members a chair, to serve a one-year term.

(f) Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by a committee, or employee or governing board member or immediate family member of an employee or governing board member of a home served by a committee, or immediate family member of a patient in a home served by a committee may be a member of a committee. Membership on a committee shall not be considered an office as defined in G.S. 128-1 or G.S. 128-1.1. Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the Division of Aging, which shall supply a copy to the Division of Facility Services.

(g) The Division of Aging, Department of Human Resources, shall develop training materials which shall be distributed to each committee member and nursing home. Each committee member must receive training as specified by the Division of Aging prior to exercising any power under subsection (h) of this section. The Division of Aging, Department of Human Resources, shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties.

(h)(1) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.

(2) Each committee shall quarterly visit the nursing home it serves. For each official quarterly visit, a majority of the committee members shall be present. In addition, each committee may visit the nursing home it serves whenever it deems it necessary to carry out its duties. In counties with four or more nursing homes, the subcommittee assigned to a home shall perform the duties of the committee under this subdivision, and a majority of the subcommittee members must be present for any visit.

(3) Each member of a committee shall have the right between 10:00 A.M. and 8:00 P.M. to enter into the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to homes served by those subcommittees to which the member has been appointed.

(4) The committee or subcommittee may communicate through its chair with the Department or any other agency in relation to the interest of any patient. The identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.

(5) Each home shall cooperate with the committee as it carries out its duties.

(6) Before entering into any nursing home, the committee, subcommittee, or member shall identify itself to the person present at the facility who is in charge of the facility at that time.

(i) Any written communication made by a member of a nursing home advisory committee within the course and scope of the member's duties, as specified in G.S. 131E-128, shall be privileged to the extent provided in this subsection. This privilege shall be a defense in a cause of action for libel if the member was acting in good faith and the statements or communications do not amount to intentional wrongdoing.

To the extent that any nursing home advisory committee or any member thereof is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance. (1977, c. 897, s. 2; 1977, 2nd Sess., c. 1192, s. 1; 1983, c. 143, ss. 4-9; c. 775, s. 1; 1987, c. 682, s. 1; 1995, c. 254, s. 7.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted the present second sentence of subdivision (h)(4) for the former second sentence, which read, "The names of all complaining persons shall remain confidential unless written permission is given for disclosure."

§ 131E-129. Penalties.

(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility's licensee which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) "Type A Violation" means a violation by a facility's licensee of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5,000) for each Type A Violation.

(2) "Type B Violation" means a violation by a facility's licensee of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to five hundred dollars ($500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility's licensee has failed to correct a Type A Violation, the Department shall assess the facility's licensee a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(2) Where a facility's licensee has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the facility's licensee a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(3) The Department shall impose a civil penalty on a facility's licensee which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the management, ownership, or control of that same licensee:

a. Has received a citation and paid a fine, or

b. Has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty,

for violating the same specific provision of a statute or regulation for which the facility's licensee has received a citation during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;

(3) The number and type of previous violations committed by the licensee;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any facility's licensee which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility's licensee wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility's licensee:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this section, provided, however, that the Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility's licensee for Type B violations except those violations that have been previously cited against the long-term care facility's licensee during the previous 12 months, or within the time period of the previous licensure inspection, whichever time period is longer. (1987, c. 600, s. 2; 1989, c. 556,

s. 2; 1993, c. 390, s. 2; 1995, c. 396, s. 1; 1995 (Reg. Sess., 1996), c. 602, s. 2.)

Effect of Amendments. — The 1995 amendment, effective July 10, 1995, added subsection (h).

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in the first sentence of subdivision (b)(3), inserted "on a facility's licensee" following "civil penalty", substituted "management, ownership, or control of that same licensee" for "same management, ownership, or control", and substituted "the facility's licensee" for "it" following "regulation for which"; and substituted "facility's licensee" for "facility" throughout the section.

ARTICLE 7.

Regulation of Ambulance Services.

§ 131E-155.1. Ambulance Provider License required.

(a) No person, firm, corporation, or association shall furnish, operate, conduct, maintain, advertise, or otherwise engage in or profess to be engaged in the business or service of treating or transporting patients upon the streets or highways, waterways, or airways in North Carolina unless a valid Ambulance Provider License has been issued by the Department.

(b) Before an Ambulance Provider License may be issued, the person, firm, corporation, or association seeking the license shall apply to the Department for this license. Application shall be made upon forms and according to procedures established by the Department. Prior to issuing an original or renewal Ambulance Provider License, the Department shall determine that the applicant meets all requirements for this license as set forth in this Article and in the rules adopted under this Article. Ambulance Provider Licenses shall be valid for a period specified by the Department, provided that the period shall be a minimum of four years unless action is taken under subsection (d) of this section.

(c) The Commission shall adopt rules setting forth the qualifications required for obtaining or renewing an Ambulance Provider License.

(d) The Department may deny, suspend, amend, or revoke an Ambulance Provider License in any case in which the Department finds that there has been a substantial failure to comply with the provisions of this Article or the rules adopted under this Article. The Department's decision to deny, suspend, amend, or revoke an Ambulance Provider License may be appealed by the applicant or licensee pursuant to the provisions of Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) Operating as an ambulance provider without a valid Ambulance Provider License is a Class 3 misdemeanor. Each day's operation as an ambulance provider without a license is a separate offense. (1995, c. 413, s. 1.)

Editor's Note. — Session Laws 1995, c. 413, s. 2, provides that this section is effective December 1, 1995, and is applicable to licenses required on or after that date and to offenses committed on or after that date.

ARTICLE 8.

Cardiac Rehabilitation Certification Program.

§ 131E-165. Title; purpose.

(a) This Article shall be known as the "Cardiac Rehabilitation Certification Program."

(b) The purpose of this Article is to provide for the development, establishment, and enforcement of rules and certification:

(1) For the care and treatment of individuals in outpatient cardiac rehabilitation programs; and

(2) For the maintenance and operation of cardiac rehabilitation programs to ensure safe and adequate treatment of individuals in cardiac rehabilitation programs. (1983, c. 775, s. 1; 1995, c. 182, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, in subsection (b) deleted "basic" preceding "rules and certification" in the introductory language and substituted "outpatient" for "out of hospital" in subdivision (b)(1).

§ 131E-166. Definitions.

As used in this Article, unless otherwise specified:

(1) "Cardiac Rehabilitation Program" means a program certified under this Article for the delivery of cardiac rehabilitation services to outpatients and includes, but shall not be limited to, coordinated, physician-directed, individualized programs of therapeutic activity and adaption designed to assist the cardiac patient in attaining the highest rehabilitative potential.

(2) "Certification" means the issuance of a certificate by the Department upon determination that cardiac rehabilitation services offered at a given program site meet all cardiac rehabilitation program rules. (1983, c. 775, s. 1; 1995, c. 182, s. 2.)

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, substituted "outpatients" for "clients in environments other than hospitals" in subdivision (1).

ARTICLE 9.

Certificate of Need.

§ 131E-175. Findings of fact.

Editor's Note. — Session Laws 1995, c. 507, s. 19.9(b) provides that any person who contracts to provide inpatient chemical dependency or substance abuse services to inmates of the Department of Correction may construct and operate a new facility for that purpose without a certificate of need from the Department of Human Resources pursuant to Article 9 of Chapter 131E.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 contains a severability clause.

CASE NOTES

The purpose behind enactment of the certificate of need law, etc. — Expansive interpretation proposed by the Department of Human Resources which allowed micro-management over relatively minor capital expenditures did not effectuate the overriding legislative intent behind the certificate of need process, i.e., regulation of major capital expenditures which may adversely impact the cost of health care services to the patient. Cape Fear Mem. Hosp. v. North Carolina Dep't of Human Resources, 121 N.C. App. 492, 466 S.E.2d 299 (1996).

Cited in Laurel Wood of Henderson, Inc. v. North Carolina Dep't of Human Resources, 117 N.C. App. 601, 452 S.E.2d 334 (1995).

§ 131E-176. Definitions.

CASE NOTES

The legislature did not intend to impose unreasonable limitations on maintaining or expanding presently offered health services. Cape Fear Mem. Hosp. v. North Carolina Dep't of Human Resources, 121 N.C. App. 492, 466 S.E.2d 299 (1996).

§ 131E-178. Activities requiring certificate of need.

CASE NOTES

Cited in Cape Fear Mem. Hosp. v. North Carolina Dep't of Human Resources, 121 N.C. App. 492, 466 S.E.2d 299 (1996).

§ 131E-179. Research activities.

CASE NOTES

Cited in Hospital Corp. v. Iredell County, 120 N.C. App. 445, 462 S.E.2d 675 (1995).

§ 131E-180.1. Expired.

Editor's Note. — Session Laws 1995, c. 359, s. 2, provided that this section expired when the Division of Facility Services completed and implemented the current rewrite of home care licensure rules, but the expiration shall be no earlier than February 1, 1996, and no later than June 30, 1996.

§ 131E-183. Review criteria.

CASE NOTES

Review of Criteria by Agency. — The certificate of need law does not contemplate that the agency will review any criteria competitively, and subsequently find one applicant nonconforming to a criterion simply because another applicant is found conforming, as the intent of the legislature is to have the agency first ensure that each application comports with the statutory and regulatory criteria. Britthaven, Inc. v. North Carolina Dep't of Human Resources, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

§ 131E-184. Exemptions from review.

CASE NOTES

The legislature did not intend to impose unreasonable limitations on maintaining or expanding presently offered health services. Cape Fear Mem. Hosp. v. North Carolina Dep't of Human Resources, 121 N.C. App. 492, 466 S.E.2d 299 (1996).

§ 131E-185. Review process.

CASE NOTES

Cited in Britthaven, Inc. v. North Carolina Dep't of Human Resources, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

§ 131E-186. Decision.

CASE NOTES

Notice of Findings and Conclusions. — Although the agency must review applications in accordance with statutory criteria and administrative rules adopted by the Department of Human Resources, subsection (b) requires the agency to provide notice of its findings and conclusions upon which it based its decision, but does not limit those findings to statutory criteria of rules. Britthaven, Inc. v. North Carolina Dep't of Human Resources, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

Review of Criteria by Agency. — The certificate of need law does not contemplate that the agency will review any criteria competitively, and subsequently find one applicant nonconforming to a criterion simply because another applicant is found conforming, as the intent of the legislature is to have the agency first ensure that each application comports with the statutory and regulatory criteria. Britthaven, Inc. v. North Carolina Dep't of Human Resources, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

§ 131E-188. Administrative and judicial review.

CASE NOTES

The exercise of the right to an evidentiary hearing under the contested case provision of subsection (a) does not commence a de novo proceeding by the administrative law judge (ALJ) intended to lead to a formulation of the final decision pursuant to § 150B-23(a), the ALJ, in a contested case hearing under the certificate of need law and the Administrative Procedure Act, § 150B-1 et seq., determines whether the petitioner has met its burden in showing that the agency substantially prejudiced petitioner's rights, and that the agency also acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule, based on a hearing limited to the evidence that is presented or available to the agency during the review period. Britthaven, Inc. v. North Carolina Dep't of Human Resources, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

Cited in Britthaven, Inc. v. North Carolina Dep't of Human Resources, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

ARTICLE 9A.

Certificate of Public Advantage.

§ 131E-192.2. Definitions.

The following definitions apply in this Article:

(1) "Attorney General" means the Attorney General of the State of North Carolina or any attorney on his or her staff to whom the Attorney General delegates authority and responsibility to act pursuant to this Article.

(2) "Cooperative agreement" means an agreement among two or more hospitals, between a hospital and any other person, or between a person who controls a hospital and another hospital or person who controls a hospital for any of the following:

a. The sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities, or medical, diagnostic, or laboratory facilities or equipment, or procedures or other services traditionally offered by hospitals.

b. A purchase of assets pursuant to a merger or sale, a partnership, a joint venture, or any other affiliation by which ownership or control over all or substantially all of the stock, assets, or activities of one or more hospitals or persons who control hospitals are transferred to another hospital or person who controls a hospital.

"Cooperative agreement" shall not include any agreement that would permit self-referrals of patients by a health care provider that is otherwise prohibited by law.

(3) "Department" means the Department of Human Resources.

(4) "Federal or State antitrust laws" means any and all federal or State laws prohibiting monopolies or agreements in restraint of trade, including the federal Sherman Act, Clayton Act, Federal Trade Commission Act, and North Carolina laws codified in Chapter 75 of the General Statutes that prohibit restraints on competition.

(5) "Hospital" means any hospital required to be licensed under Chapters 131E or 122C of the General Statutes.

(6) "Person" means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency. (1993, c. 529, s. 5.2; 1995, c. 205, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 8, 1995, and applicable to applications filed on or after that date, in subdivision (2), at the end of the introductory language, substituted "or between a person who controls a hospital and another hospital or person who controls a hospital for any of the following:" for "for the" and made a related change; added the subdivision (2)a. and (2)b. designations; added "the" to the beginning of subdivision (2)a.; added subdivision (2)b.; and in the last sentence of the subsection, following "any agreement" deleted "by which ownership over substantially all of the stock, assets, or activities of one or more previously licensed and operating hospitals is transferred nor any agreement"; and made a stylistic change.

§ 131E-192.11. Fees for applications and periodic reports.

(a) The Department and the Attorney General shall establish a schedule of fees for filing an application for a certificate of public advantage and for filing a periodic report based on the total cost of the project for which the application or periodic report is made. The fee for filing an application may not exceed fifteen thousand dollars ($15,000). The fee for filing a periodic report may not exceed two thousand five hundred dollars ($2,500). The fee schedule established should generate sufficient revenue to offset the costs of the program. An application filing fee must be paid to the Department at the time an application for a certificate of public advantage is submitted to it pursuant to G.S. 131E-192.3. A periodic report filing fee must be paid to the Department at the time a periodic report is submitted to it pursuant to G.S. 131E-192.9.

(b) If the Department or the Attorney General determines that consultants are needed to complete a review of an application, an additional application fee may be established by prior agreement with the applicants before the application is considered. The amount of the additional fee may not exceed the costs of contracting with the necessary consultants. The additional fee shall not be considered in determining whether an application fee exceeds the maximum application fee amount set in subsection (a) of this section. (1993, c. 529, s. 5.2; 1995, c. 205, s. 2.)

Effect of Amendments. — The 1995 amendment, effective June 8, 1995, and applicable to applications filed on or after that date, added the subsection (a) designation and added subsection (b).

ARTICLE 11.

North Carolina Medical Database Commission.

§§ 131E-210 through 131E-213: Repealed by Session Laws 1995, c. 517, s. 39, effective October 1, 1995.

Editor's Note. — Session Laws 1995, c. 517, s. 38, effective July 29, 1995, repealed Session Laws 1985, c. 757, s. 208(d), as amended by Session Laws 1991, c. 480, s. 1, effective July 1, 1991, which provided that this Article would expire and the North Carolina Medical Database Commission would terminate on July 1, 1996.

ARTICLE 11A.

Medical Care Data.

§ 131E-214. Title and purpose.

(a) This Article is the Medical Care Data Act.

(b) The General Assembly finds that, as a result of rising medical care costs and the concern expressed by medical care providers, medical care consumers, third-party payors, and health care planners involved with planning for the provision of medical care, there is an urgent and continuing need to understand patterns and trends in the use and cost of medical care services in this State. The purposes of this Article are as follows:

(1) To ensure that there is an information base containing medical care data from throughout the State that can be used to improve the appropriate and efficient use of medical care services and maintain an acceptable quality of health care services in this State.
(2) To ensure that the necessary medical care data is available to university researchers, State public policymakers, and all other interested persons to improve the decision-making process regarding access, identified needs, patterns of medical care, charges, and use of appropriate medical care services.
(3) To ensure that a data processor receiving data under this Article protects patient confidentiality.

These purposes are to be accomplished by requiring that all hospitals and freestanding ambulatory surgical facilities submit information necessary for a review and comparison of charges, utilization patterns, and quality of medical services to a data processor that maintains a statewide database of medical care data and that makes medical care data available to interested persons, including medical care providers, third-party payors, medical care consumers, and health care planners. (1995, c. 517, s. 39(b).)

Editor's Note. — Session Laws 1995, c. 517, s. 42, made this Article effective October 1, 1995.

Session Laws 1995, c. 517, which enacted this article, in s. 39(e) provided that this article does not require a person, corporation, or other entity not previously required to report data to the Medical Database Commission to report data under this article, nor does it require a person, corporation, or other entity to be a statewide data processor.

Session Laws 1995, c. 517, s. 39(h) provides that of funds appropriated in Session Laws 1995, c. 324, $150,000 is transferred for fiscal year 1995-96 from the Department of Insurance to the Department of Human Resources, Division of Facility Services to be used to certify statewide data processors under Article 11A of Chapter 131E.

Session Laws 1995, c. 517, ss. 39(i) and 41, contain severability clauses.

§ 131E-214.1. Definitions.

As used in this Article:

(1) "Division" means the Division of Facility Services of the Department of Human Resources.
(2) "Freestanding ambulatory surgical facility" means a facility licensed under Part D of Article 6 of this Chapter.
(3) "Hospital" means a facility licensed under Article 5 of this Chapter or Article 2 of Chapter 122C of the General Statutes, but does not include the following:
    a. A facility with all of its beds designated for medical type "LTC" (long-term care).
    b. A facility with the majority of its beds designated for medical type "PSY-3" (mental retardation).
    c. A facility operated by the North Carolina Department of Correction.
(4) "Patient data" means data that includes a patient's age, sex, zip code, third-party coverage, principal and other diagnosis, date of admission, procedure and discharge date, principal and other procedures, total charges and components of the total charges, attending physician identification

number, and hospital or freestanding ambulatory surgical facility identification number.

(5) "Patient identifying information" means the name, address, social security number, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a health care provider if that number does not consist of or contain numbers, including social security or drivers license numbers, that could be used to identify a patient with reasonable accuracy and speed from sources external to the health care provider.

(6) "Statewide data processor" means a data processor certified by the Division as capable of complying with the requirements of G.S. 131E-214.4. The Division may deny, suspend, or revoke a certificate, in accordance with Chapter 150B of the General Statutes, if the statewide data processor does not comply with or is not capable of complying with the requirements of G.S. 131E-214.4. The Division is authorized to promulgate rules concerning the receipt, consideration, and limitation of a certificate applied for or issued under this Article. (1995, c. 517, s. 39(b).)

§ 131E-214.2. Data submission required.

Except as prohibited by federal law or regulation, each hospital and freestanding ambulatory surgical facility shall submit patient data to a statewide data processor within 60 calendar days after the close of each calendar quarter for patients that were discharged or died during that quarter. (1995, c. 517, s. 39(b).)

§ 131E-214.3. Patient data not public records.

(a) The following are not public records under Chapter 132 of the General Statutes:

(1) Patient data furnished to and maintained by a statewide data processor pursuant to this Article.

(2) Compilations of patient data prepared for release or dissemination by a statewide data processor pursuant to this Article.

(3) Patient data furnished by a statewide data processor to the State.

(b) Compilations of data under subdivision (a)(3) of this section, prepared for release or dissemination by the State, are public records.

(c) The State shall not allow proprietary information, including patient data, that it receives from a statewide data processor to be used by a person for commercial purposes. The State shall require the person requesting this information to certify that it will not use the information for commercial purposes.

(d) A person is immune from liability for actions arising from the required submission of data under this Article. (1995, c. 517, s. 39(b).)

§ 131E-214.4. Statewide data processor.

(a) A statewide data processor shall perform the following duties:

(1) Make available annually to the Division, at no charge, a report that includes a comparison of the 35 most frequently reported charges of hospitals and freestanding ambulatory surgical facilities. The report is a public record and shall be made available to the public in accordance with Chapter 132 of the General Statutes. Publication or broadcast by the news media shall not constitute a resale or use of the data for commercial purposes.

(2) Receive patient data from hospitals and freestanding ambulatory surgical facilities throughout this State.

(3) Compile and maintain a uniform set of data from the patient data submitted.

(4) Analyze the patient data.

(5) Compile reports from the patient data and make the reports available upon request to interested persons at a reasonable charge determined by the data processor.

(6) Ensure that adequate measures are taken to provide system security for all data and information received from hospitals and freestanding ambulatory surgical facilities pursuant to this Article.

(7) Protect the confidentiality of patient records and comply with applicable laws and regulations concerning patient confidentiality, including the confidentiality of patient-identifying information. The data processor shall not disclose patient-identifying information unless (i) the information was originally submitted by the party requesting disclosure or (ii) the State Health Director requests specific individual records for the purpose of protecting and promoting the public health under Chapter 130A of the General Statutes, and the disclosure is not otherwise prohibited by federal law or regulation. Such records shall be made available to the State Health Director at a reasonable charge. Such records made available to the State Health Director are not public records; the State Health Director shall maintain their confidentiality and shall not make the records available notwithstanding G.S. 130A-374(a)(2).

(b) The Department of Human Resources may take adverse action against a hospital under G.S. 131E-78 or G.S. 122C-24 or against a freestanding ambulatory surgical center under G.S. 131E-148 for a violation of this Article. (1995, c. 517, s. 39(b).)

ARTICLE 13.

Temporary Management of Long-Term Care Facilities.

§ 131E-231. Definitions.

As used in this Article, unless otherwise specified:

(1) "Long-term care facility" means a nursing home as defined in G.S. 131E-101(6) and an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4).

(2) "Resident" means a person who has been admitted to a long-term care facility.

(3) "Respondent" means the person or entity holding a license pursuant to G.S. 131E-102 or G.S. 131D-2 or a person or entity operating a long-term care facility subject to licensure without a license. (1993, c. 390, s. 1; 1995, c. 535, s. 26.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, rewrote subdivision (1).

§ 131E-242. Contingency fund.

(a) The Department shall establish a temporary management contingency fund from the proceeds of penalties collected by the Department under the provisions of G.S. 131E-109 and G.S. 131E-129 for nursing facilities, and G.S. 131D-2 and G.S. 131D-34 for adult care homes.

(b) Upon a showing that proper expenses of the temporary management under this Article exceed the operating funds of the long-term care facility, the court, in its discretion, may order that the Department provide funds from the contingency fund to the temporary manager to operate the facility and compensate the temporary manager.

(c) When the total funds available in the contingency fund exceed five hundred thousand dollars ($500,000), the Department may reallocate any or all of the amount in excess of five hundred thousand dollars ($500,000) for other activities intended to protect the health and property of residents. (1993, c. 390, s. 1; 1995, c. 535, s. 27.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care homes" for "domiciliary homes" in subsection (a).

ARTICLE 14.

Disposal of Surplus Property to Aid Other Countries.

§ 131E-250. Disposition of surplus property by public and State hospitals.

(a) As used in this section, "public hospital" has the same meaning as in G.S. 159-39. A State hospital is any hospital operated by the State.

(b) A public hospital or a State hospital may donate medical equipment it determines is no longer needed by the hospital to any of the following if the property so donated is to be used by a hospital or medical facility in another country:

(1) A corporation that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(2) The United States or any agency of it.
(3) The government of a foreign country or any political subdivision of that country.
(4) The United Nations or an agency of it.
(5) Other eleemosynary institutions and groups. (1993, c. 529, s. 7.6; 1995, c. 509, s. 73.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, in the introductory language of subsection (b) added "of the following if the property so donated is to be used by a hospital or medical facility in another country"; in subdivision (b)(1) substituted "A corporation that" for "Corporation which"; in subdivision (b)(2) added "The" at the beginning; in subdivision (b)(4) substituted "it" for "it; or to"; deleted "if the property so donated is to be used by a hospital or medical facility in another country" from the end of the section; and made punctuation and stylistic changes.

§§ 131E-251 through 131E-254: Reserved for future codification purposes.

ARTICLE 15.

Health Care Personnel Registry.

§ 131E-255. Nurse Aide Registry.

(a) Pursuant to 42 U.S.C. § 1395i-3(e) and 42 U.S.C. § 1396r(e), the Department shall establish and maintain a registry containing the names of all nurse aides working in nursing facilities in North Carolina. The Department shall include in the nurse aide registry any findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of the property of a resident in a nursing facility by a nurse aide.

(b) A nurse aide who wishes to contest a finding of resident neglect, resident abuse, or misappropriation of resident property made against the aide, is entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice by certified mail of the Department's intent to place findings against the aide in the nurse aide registry.

(c) "Nursing facility", as used in this section, means a "combination home" as defined in G.S. 131E-101(1) and a "nursing home" as defined in G.S. 131E-101(6) and also means "facility" as that term is defined in G.S. 131E-116(2).

(d) The Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section.

(e) No person shall be liable for providing any information for the nurse aide registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the nurse aide registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee. (1991, c. 185, s. 1; c. 761, s. 26; 1995 (Reg. Sess., 1996), c. 713, ss. 3(a), (b).)

Editor's Note. — This section was formerly numbered 131E-111. It was recodified as § 131E-255 by Session Laws 1995 (Reg. Sess., 1996), c. 713, s. 3.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, recodified former G.S. 131E-111 as this section; substituted "of the mailing of the" for "after the nurse aide receives" in the last sentence of subsection (b); and added subsection (e).

§ 131E-256. Health Care Personnel Registry.

(a) The Department shall establish and maintain a health care personnel registry containing the names of all health care personnel working in health care facilities in North Carolina who have:

(1) Been subject to findings by the Department of:

a. Neglect or abuse of a resident in a health care facility or a person to whom home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.

b. Misappropriation of the property of a resident in a health care facility, as defined in subsection (b) of this section including places where home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.

c. Misappropriation of the property of a health care facility.

d. Diversion of drugs belonging to a health care facility or to a patient or client.

e. Fraud against a health care facility or against a patient or client for whom the employee is providing services.

(2) Been accused of any of the acts listed in subdivision (1) of this subsection, but only after the Department has screened the allegation and determined that an investigation is required.

The health care personnel registry shall also contain all findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of the property of a resident in a nursing facility by a nurse aide that are contained in the nurse aide registry under G.S. 131E-255.

(b) For the purpose of this section, the following are considered to be "health care facilities":

(1) Adult Care Homes as defined in G.S. 131D-2.
(2) Hospitals as defined in G.S. 131E-76.
(3) Home Care Agencies as defined in G.S. 131E-136.
(4) Nursing Pools as defined by G.S. 131E-154.2.
(5) Hospices as defined by G.S. 131E-201.
(6) Nursing Facilities as defined by G.S. 131E-255.

(c) For the purpose of this section, the following are considered to be "health care personnel":

(1) In an adult care home, an adult care personal aide who is any person who either performs or directly supervises others who perform task functions in activities of daily living which are personal functions essential for the health and well-being of residents such as bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.

(2) A nurse aide.

(3) An in-home aide or an in-home personal care aide who provides hands-on paraprofessional services.

(d) Health care personnel who wish to contest a finding under subdivision (a)(1) of this section or the placement of information under subdivision (a)(2) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice by certified mail of the Department's intent to place information about the person in the health care personnel registry.

(e) The Department shall provide an employer or potential employer of any person listed on the health care personnel registry of the nature of the finding or allegation and the status of the investigation.

(f) No person shall be liable for providing any information for the health care personnel registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the health care personnel registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee.

(g) Upon investigation and documentation, health care facilities shall ensure that the Department is notified of all allegations against health care personnel which appear to a reasonable person to be related to any act listed in subdivision (a)(1) of this section, and shall promptly report to the Department any resulting disciplinary action, demotion, or termination of employment of health care personnel.

(h) The North Carolina Medical Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. (1995 (Reg. Sess., 1996), c. 713, s. 3(b).)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 713, s. 4, made this section effective upon ratification. The Act was ratified June 21, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 713, s. 3(c), provides: "The North Carolina Medical Care Commission shall monitor the implementation of the Health Care Personnel Registry and shall report to the General Assembly in 1998 any amendments needed to implement the purposes of the Health Care Personnel Registry."

§§ 131E-257 through 131E-264: Reserved for future codification purposes.

ARTICLE 16.

Miscellaneous Provisions.

§ 131E-265. (See editor's note for effective date) Criminal history record checks required for certain applicants for employment.

(a) Requirement. — An offer of employment by a nursing home or a home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. A nursing home or

§ 131E-265 has a delayed effective date. See notes.

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home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be disclosed.

(b) Action. — If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the administrator of the nursing home or home care agency, or the administrator's designee, shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the administrator or the administrator's designee.

(c) Limited Immunity. — An entity and an officer or employee of an entity that, in good faith, complies with this section is not liable for the failure of the entity to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. — As used in this section, the term "relevant offense" has the same meaning as in G.S. 131D-40. (1995 (Reg. Sess., 1996), c. 606, s. 3.)

Editor's Note. — The number of this Article and the number of this section were assigned by the Revisor of Statutes, the numbers as enacted by Session Laws 1995 (Reg. Sess., 1996), c. 606, s. 3, having been Article 15 and § 131E-255.

Session Laws 1995 (Reg. Sess., 1996), c. 606, s. 5, as amended by Session Laws 1995 (Reg. Sess., 1996), c. 742, s. 42.2, made this article effective January 1, 1997, except that the requirements imposed by this article on home care agencies become effective January 1, 1998, and this article is applicable to applicants who apply for employment on or after the appropriate effective date.

Chapter 131F.
Solicitation of Contributions.

Article 1.

General Provisions.

Sec.
131F-3. Exemptions.

Article 2.

Charitable Organizations and Sponsors.

131F-6. Information required for licensure.

Sec.
131F-9. Disclosure requirements of charitable organizations and sponsors.

Article 3.

Fund-Raising Consultants, Solicitors, and Coventurers.

131F-17. Disclosure requirements of solicitors.

ARTICLE 1.

General Provisions.

§ 131F-1. Purpose.

Legal Periodicals. — For survey, "An Informed Consumer is the Best Defense: Charitable Solicitation Regulation in North Carolina Under N.C. Gen. Stat. §§ 131F-1 to -28," see 73 N.C.L. Rev. 2303 (1995).

§ 131F-3. Exemptions.

The following are exempt from the provisions of this Chapter:

(1) Any person who solicits charitable contributions for a religious institution.

(2) Solicitation of charitable contributions by the federal, State, or local government, or any of their agencies.

(3) Any person who receives less than twenty-five thousand dollars ($25,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser, or solicitor.

(4) Any educational institution, the curriculum of which, in whole or in part, is registered, approved, or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body, and any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes, and any foundation or department having an established identity with any of these educational institutions.

(5) Any hospital licensed pursuant to Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes and any foundation or department having an established identity with that hospital if the governing board of the hospital, authorizes the solicitation and receives an accounting of the funds collected and expended.

(6) Any noncommercial radio or television station.

(7) A qualified community trust as provided in 26 C.F.R. § 1.170A-9(e)(10) through (e)(14).

(8) A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor.
(9) An attorney, investment counselor, or banker who advises a person to make a charitable contribution.
(10) A volunteer fire department, rescue squad, or emergency medical service.
(11) A Young Men's Christian Association or a Young Women's Christian Association. (1981, c. 886, s. 1; 1983, c. 320, ss. 1, 2; 1991, c. 45, s. 24; 1993 (Reg. Sess., 1994), c. 759, s. 2; 1995 (Reg. Sess., 1996), c. 650, s. 1.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added subdivision (11).

ARTICLE 2.

Charitable Organizations and Sponsors.

§ 131F-5. Licensure of charitable organizations and sponsors required.

Legal Periodicals. — For survey, "An Informed Consumer is the Best Defense: Charitable Solicitation Regulation in North Carolina Under N.C. Gen. Stat. §§ 131F-1 to -28," see 73 N.C.L. Rev. 2303 (1995).

§ 131F-6. Information required for licensure.

(a) Initial Information Required. — The initial application for a license for a charitable organization or sponsor shall be submitted on a form provided by the Department, signed under oath by the treasurer or chief fiscal officer of the charitable organization or sponsor, and shall include the following:
(1) The name of the charitable organization or sponsor, the purpose for which it is organized, the name under which it intends to solicit contributions, and the purpose for which the contributions to be solicited will be used.
(2) The principal street address and telephone number of the charitable organization or sponsor and the street address and telephone numbers of any offices in this State or, if the charitable organization or sponsor does not maintain an office in this State, the name, street address, and telephone number of the person who has custody of its financial records. The parent organization that files a consolidated registration statement under G.S. 131F-7 on behalf of its chapters, branches, or affiliates shall additionally provide the street addresses and telephone numbers of all of its locations in this State.
(3) The names and street addresses of the officers, directors, trustees, and the salaried executive personnel.
(4) The date when the charitable organization's or sponsor's fiscal year ends.
(5) A list or description of the major program activities.
(6) The names, street addresses, and telephone numbers of the individuals or officers who have final responsibility for the

custody of the contributions and who will be responsible for the final distribution of the contributions.

(7) The name of the individuals or officers who are in charge of any solicitation activities.

(8) A financial report for the immediately preceding fiscal year upon a form provided by the Department. The report shall include the following:
   a. The balance sheet.
   b. A statement of support, revenue, and expenses, and any change in the fund balance.
   c. Repealed by Session Laws 1995 (Regular Session, 1996), c. 748, s. 1.3, effective July 1, 1996.
   d. A statement of expenses in the following categories:
      1. Program.
      2. Management and general.
      3. Fund-raising.

(9) In substitution for the information described in subdivisions (3), (4), (5), (6), and (8) of this subsection, a charitable organization or sponsor may submit, at the time the application is filed, a copy of its Internal Revenue Service Form 990 and Schedule A filed for the preceding fiscal year, or a copy of its Form 990-EZ filed for the preceding fiscal year.

(10) A charitable organization or sponsor may include a financial report which has been audited by an independent certified public accountant or an audit with opinion by an independent certified public accountant. In the event that a charitable organization or sponsor elects to file this, this optional filing shall be noted in the Department's annual report submitted under G.S. 131F-30.

(11) A newly organized charitable organization or sponsor with no financial history shall file a budget for the current fiscal year.

(12) A statement indicating all of the following:
   a. Whether or not the charitable organization or sponsor is authorized by any other state to solicit contributions.
   b. Whether or not the charitable organization or sponsor or any of its officers, directors, trustees, or salaried executive personnel have been enjoined in any jurisdiction from soliciting contributions or have been found to have engaged in unlawful practices in the solicitation of contributions or administration of charitable assets.
   c. Whether or not the charitable organization or sponsor has had its authority denied, suspended, or revoked by any governmental agency, together with the reasons for the denial, suspension, or revocation.
   d. Whether or not the charitable organization or sponsor has voluntarily entered into an assurance of voluntary compliance or agreement similar to that set forth in G.S. 131F-24(c), together with a copy of that agreement.

(13) The names, street addresses, and telephone numbers of any solicitor, fund-raising consultant, or coventurer who is acting or has agreed to act on behalf of the charitable organization or sponsor, together with a statement setting forth the specific terms of the arrangements for salaries, bonuses, commissions, expenses, or other compensation to

be paid the fund-raising consultant, solicitor, or coventurer, and the amounts received from each of them, if any.

(14) With initial licensing only, when and where the organization was established, the tax-exempt status of the organization, and a copy of any federal tax exemption determination letter. If the charitable organization or sponsor has not received a federal tax exemption determination letter at the time of initial licensing, a copy of the determination shall be filed with the Department within 30 days after receipt of the determination by the charitable organization or sponsor. If the organization is subsequently notified by the Internal Revenue Service of any challenge to its continued entitlement to federal tax exemption, the charitable organization or sponsor shall notify the Department of this fact within 30 days after receipt.

(b) Renewal Information Required. — A license shall be renewed on an annual basis. The charitable organization or sponsor shall submit any changes in the information submitted from the initial application. (1981, c. 886, s. 1; 1993 (Reg. Sess., 1994), c. 759, s. 2; 1995 (Reg. Sess., 1996), c. 748, s. 1.3.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, deleted subdivision (a)(8)c., which read "The names and addresses of any fund raising consultant, solicitor, and coventurer used, if any, and the amounts received from each of them, if any"; in subdivision (a)(9), substituted "information described in subdivisions (3), (4), (5), (6), and (8)" for "financial report described in subdivision (8)", and inserted "at the time the application is filed" following "sponsor may submit"; and added "and the amounts received from each of them, if any" to the end of subdivision (a)(13).

§ 131F-9. Disclosure requirements of charitable organizations and sponsors.

(a) Contributions for Expressed Purpose. — A charitable organization or sponsor shall solicit contributions only for the purpose expressed in its application and may apply contributions only in a manner substantially consistent with that purpose.

(b) Disclosures. — A charitable organization or sponsor soliciting in this State shall include all of the following disclosures at the point of solicitation:

(1) The name of the charitable organization and state of the principal place of business of the charitable organization or sponsor.

(2) A description of the purpose for which the solicitation is being made.

(3) Upon request, the name and either the address or telephone number of a representative to whom inquiries could be addressed.

(4) Upon request, the amount of the contribution which may be deducted as a charitable contribution under federal income tax laws.

(5) Upon request, the source from which a written financial statement may be obtained. The financial statement shall be for the immediate past fiscal year and shall be consistent with G.S. 131F-6. The written financial statement shall be provided within 14 days after the request and shall state the purpose for which funds are raised, the total amount of

all contributions raised, the total costs and expenses incurred in raising contributions, the total amount of contributions dedicated to the stated purpose or disbursed for the stated purpose, and whether the services of another person or organization have been contracted to conduct solicitation activities.

(c) Printed Disclosure. — Every charitable organization or sponsor that is required to obtain a license under G.S. 131F-5 shall conspicuously display in type of a minimum size nine points, the following statement on every printed solicitation, written confirmation, receipt, or reminder of a contribution:

"Financial information about this organization and a copy of its license are available from the State Solicitation Licensing Branch at [telephone number]. The license is not an endorsement by the State."

The statement shall be made conspicuous by use of one or more of the following: underlining, a border, or bold type. When the solicitation consists of more than one piece, the statement shall be displayed prominently in the solicitation materials, but not necessarily on every page. (1985, c. 497, s. 8; 1989, c. 566, s. 3; 1993 (Reg. Sess., 1994), c. 759, s. 2; 1995 (Reg. Sess., 1996), c. 748, s. 1.1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 748, s. 3.1, provides in part: "Effective until January 1, 1998, a document that complies with the requirements of G.S. 131F-9(c) or G.S. 131F-17(a)(3) as in effect before ratification of this act shall be considered to comply with the requirements of the respective statutes as amended by this act."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote subsection (c).

ARTICLE 3.

Fund-Raising Consultants, Solicitors, and Coventurers.

§ 131F-17. Disclosure requirements of solicitors.

(a) General Disclosures. — A solicitor shall comply with the following disclosures:

(1) Prior to orally requesting a contribution or along with a written request for a contribution, a solicitor shall clearly disclose:

a. The name of the solicitor as on file with the Department.

b. If the individual acting on behalf of the solicitor identifies himself by name, the individual's legal name.

c. That the caller is a paid solicitor.

(2) In the case of a solicitation campaign conducted orally, whether by telephone or otherwise, any written confirmation, receipt, or reminder sent to any person who has contributed or has pledged to contribute, shall include a clear disclosure of the information required under subdivision (1) of this subsection.

(3) In addition to the information required by subdivision (1) of this subsection, any written confirmation, receipt, or reminder of contribution made pursuant to an oral solicitation and any written solicitation shall conspicuously state in type of a minimum of nine points:

"Financial information about the solicitor and a copy of its license are available from the State Solicitation Licensing Branch at [telephone number]. The license is not an endorsement by the State."

The statement shall be made conspicuous by use of one or more of the following: underlining, a border, or bold type. When the solicitation materials consist of more than one piece, the statement shall be displayed prominently in the solicitation materials, but not necessarily on every page.

(4) If requested by the person being solicited, the solicitor shall inform that person, in writing, within 14 days of the request, of the fixed percentage of the gross revenue or the reasonable estimate of the percentage of the gross revenue that the charitable organization or sponsor will receive as a benefit from the solicitation campaign.

(5) If requested by the person being solicited, the solicitor shall inform that person, in writing, within 14 days of the request, of the percentage of the contribution which may be deducted as a charitable contribution under federal income tax laws.

(b) Tickets. — A solicitor shall not represent that tickets to any event will be donated for use by another person, unless:

(1) The solicitor has the written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

(2) The written commitments are filed with the Department prior to any solicitation.

The contributions solicited for donated tickets shall not be more than the amount representing the number of ticket commitments received from persons and filed with the Department. At least seven days before the date of the event, the solicitor shall give all donated tickets to each person that made the written commitment to accept them. (1993 (Reg. Sess., 1994), c. 759, s. 2; 1995 (Reg. Sess., 1996), c. 748, s. 1.2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 748, s. 3.1, provides in part: "Effective until January 1, 1998, a document that complies with the requirements of G.S. 131F-9(c) or G.S. 131F-17(a)(3) as in effect before ratification of this act shall be considered to comply with the requirements of the respective statutes as amended by this act."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote subdivision (a)(3).

Legal Periodicals. — For survey, "An Informed Consumer is the Best Defense: Charitable Solicitation Regulation in North Carolina Under N.C. Gen. Stat. §§ 131F-1 to -28," see 73 N.C.L. Rev. 2303 (1995).

Chapter 132.

Public Records.

Sec.
132-1.1. Confidential communications by legal counsel to public board or agency; State tax information.

§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information.

(a) Confidential Communications. — Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. — Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1. (1975, c. 662; 1993, c. 485, s. 38; 1995 (Reg. Sess., 1996), c. 646, s. 21.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in subsection (b), inserted "and Local" in the subcatchline, deleted "153A-148.1, and 160A-208.1" from the end of the first sentence, and added the last sentence.

Chapter 133.

Public Works.

Article 1.

General Provisions.

Sec.
133-3. Specifications to carry competitive items; substitution of materials.
133-4. Violation of Chapter made misdemeanor.
133-4.1. Guaranteed energy savings contracts.

Article 3.

Regulation of Contractors for Public Works.

Sec.
133-23. Definition.
133-28. Civil damages; liability; statute of limitations.
133-31. Perjury; punishment.
133-32. Gifts and favors regulated.

ARTICLE 1.

General Provisions.

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

Editor's Note. — As to exemption of the Office of State Budget and Management from the requirements of this section in the administration and implementation of the Prison Facilities Legislative Bond Act of 1990, see Session Laws 1989 (Reg. Sess., 1990), c. 933, s. 6(4).

As to the exemption of the Office of State Budget and Management from the requirements of this section in the implementation of providing prison facilities under the provisions of the State Prison and Youth Services Facilities Bond Act, see Session Laws 1989 (Reg. Sess., 1990), c. 935, s. 6(a)(4).

As to exemption of the Office of State Budget and Management from the requirements of subsection (b) of this section with respect to facilities authorized for the Department of Correction, see Session Laws 1991, c. 689, s. 239(f), as amended by Session Laws 1991 (Reg. Sess., 1992), c. 1044, s. 41(b).

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II, and III of this act shall apply only to funds appropriated for and activities occurring during the 1991-93 biennium."

As to exemption of the Office of State Construction of the Department of Administration from subsection (g) of this section to the extent necessary to expedite delivery with respect to construction of certain state prison and youth service facilities, see Session Laws 1993, c. 550, s. 6.

As to exemption of the Office of State Construction of the Department of Administration from the requirements of subsection (g) of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), 143-128, 143-129, 143-131, 143-132, 143-134, 143-135.26, and 143-408.1 through 143-408.7.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 contains a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a), provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 133-3. Specifications to carry competitive items; substitution of materials.

All architects, engineers, designers, or draftsmen, when providing design services, or writing specifications, directly or indirectly, for materials to be used in any city, county or State work, shall specify in their plans the required performance and design characteristics of such materials. However, when it is impossible or impractical to specify the required performance and design characteristics for such materials, then the architect, engineer, designer or draftsman may use a brand name specification so long as they cite three or more examples of items of equal design or equivalent design, which would establish an acceptable range for items of equal or equivalent design. The specifications shall state clearly that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Where it is impossible to specify performance and design characteristics for such materials and impossible to cite three or more items due to the fact that there are not that many items of similar or equivalent design in competition, then as many items as are available shall be cited. On all city, county or State works, the maximum interchangeability and compatibility of cited items shall be required. The brand of product used on a city, county or State work shall not limit competitive bidding on future works. If an architect, engineer, designer, draftsman or owner prefers a particular brand of material, then such brand shall be bid as an alternate to the base bid and in such case the base bid shall cite three or more examples of items of equal or equivalent design, which would establish an acceptable range for items of equal or equivalent design. Substitution of materials, items, or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval; such approval or disapproval shall be made by the architect or engineer prior to the opening of bids. The purpose of this statute is to mandate and encourage free and open competition on public contracts. (1933, c. 66, s. 3; 1951, c. 1104, s. 5; 1993, c. 334, s. 7.1.)

Editor's Note. — Session Laws 1993, c. 334, s. 7.1, amended this section, effective July 13, 1993, and applicable to all construction and renovation projects for any city, county or State works that start the design process on or after that date.

§ 133-4. Violation of Chapter made misdemeanor.

Any person, firm, or corporation violating the provisions of this Chapter shall be guilty of a Class 3 misdemeanor and upon conviction, license to practice his profession in this State shall be withdrawn for a period of one year and he shall only be subject to a fine of not more than five hundred dollars ($500.00). (1933, c. 66, s. 4; 1993, c. 539, s. 969; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 969, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 133-4.1. Guaranteed energy savings contracts.

Except for G.S. 133-1.1, the provisions of this Article shall not apply to energy conservation measures undertaken as part of a guaranteed energy savings contract entered into pursuant to the provisions of Part 2 of Article 3B of Chapter 143 of the General Statutes. (1993 (Reg. Sess., 1994), c. 775, s. 8.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 11, made this section effective upon ratification. The Act was ratified July 16, 1994.

ARTICLE 2.

Relocation Assistance.

§ 133-7. Definitions.

Editor's Note. —
In the historical citation for this section in the main volume, "1989, c. 25" should be "1989, c. 28."

§ 133-9. Replacement housing for homeowners.

Local Modification. — City of Durham: 1993, c. 304, s.1.

ARTICLE 3.

Regulation of Contractors for Public Works.

§ 133-23. Definition.

(a) The term "governmental agency" shall include the State of North Carolina, its agencies, institutions, and political subdivisions, all municipal corporations and all other public units, agencies and authorities which are authorized to enter into public contracts for construction or repair or for procurement of goods or services.

(b) The term "person" shall mean any individual, partnership, corporation, association, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

(c) The term "subsidiary" shall mean a corporation with respect to which another corporation by virtue of its shareholdings alone has legal power, either directly or indirectly through another corporation or series of other corporations, domestic or foreign, to elect a majority of the directors. A corporation is a subsidiary of each such corporation, including any corporation through which this legal power may be indirectly exercised. (1981, c. 764, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 38.)

§ 133-28. Civil damages; liability; statute of limitations.

(a) Any governmental agency entering into a contract which is or has been the subject of a conspiracy prohibited by G.S. 75-1 or 75-2 shall have a right of action against the participants in the conspiracy to recover damages, as provided herein. The governmental agency shall have the option to proceed jointly and severally in a civil action against any one or more of the participants for recovery of the full amount of the damages. There shall be no right to contribution among participants not named defendants by the governmental agency.

(b) At the election of the governmental agency, the measure of damages recoverable under this section shall be either the actual damages or ten percent (10%) of the contract price which shall be trebled as provided in G.S. 75-16.

(c) The cause of action shall accrue at the time of discovery of the conspiracy by the governmental agency which entered into the contract. The action shall be brought within six years of the date of accrual of the cause of action. (1981, c. 764, s. 1; 1993, c. 441, s. 1.)

§ 133-31. Perjury; punishment.

Any person who shall willfully commit perjury in any affidavit taken pursuant to this Article or rules pursuant thereto shall be guilty of a felony and shall be punished as a Class I felon. (1981, c. 764, s. 1; 1993, c. 539, s. 1307; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1307, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 133-32. Gifts and favors regulated.

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

(1) Has a contract with a governmental agency; or

(2) Has performed under such a contract within the past year; or

(3) Anticipates bidding on such a contract in the future
to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:
(1) Preparing plans, specifications, or estimates for public contract; or
(2) Awarding or administering public contracts; or
(3) Inspecting or supervising construction.
It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:
(1) Preparing plans, specifications, or estimates for public contracts; or
(2) Awarding or administering public contracts; or
(3) Inspecting or supervising construction
willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a Class 1 misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1; 1987, c. 399, s. 1; 1993, c. 539, s. 970; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 970, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 134A.

Youth Services.

Article 1.

Division of Youth Services in the Department of Human Resources.

§ 134A-1. Legislative intent and purpose.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 23.20, provides for the funding of treatment and education programs for children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a Class in the case of Willie M., et al v. Hunt, et al.; s. 23.20(b) provides that funds appropriated by the General Assembly to the Department of Human Resources for serving members of the Willie M. Class shall be expended only for programs serving members of that Class identified in Willie M., et al v. Hunt, et al., including evaluations of potential Class members, and that the Department shall reallocate these funds among services to Class members during the year as it deems advisable; s. 23.20(d) provides for the Department to continue to implement its prospective unit cost reimbursement system, to ensure that unit cost rates reflect reasonable costs, and to reduce and/or cap rates to programs which are significantly higher than those rates paid to other programs for the same service; s. 23.20(d1) provides for review by the Department of cases whose annual cost is anticipated to be in excess of 150% of the average annual per client expenditure of the previous fiscal year; s. 23.20(e1) provides for the Department to document and assess individual Class members' progress through the continuum of services; and s. 23.20(i) provides that if the Department determines a local program is not providing appropriate services, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation of the programs.

Session Laws 1995, c. 324, s. 23.20(e), provides that the Department of Human Resources and the Department of Public Education shall submit, by May 1 of each fiscal year, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class, which shall include specified data for each county; and s. 23.20(f) provides that those departments shall provide periodic reports of expenditures and program effectiveness on behalf of the Willie M. Class to the Fiscal Research Division, which shall include explanations of measures they have taken to control and reduce program expenditures.

Session Laws 1995, c. 324, s. 23.20(h), provides that the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program is not precluded by the limitation that no funds be expended on placement and services for Willie M. Class members except funds specifically appropriated by the General Assembly for members, or funds for placement or services for which members are otherwise eligible; and that these expenditures shall not be subject to the requirements of G.S. 143-18.

§ 134A-2. Definitions.

OPINIONS OF ATTORNEY GENERAL

Institutions and Transfer of Educational Records. — Local school boards can and should transmit to the Division of Youth Services (DYS) and other Department of Human Resources (DHR) agencies providing educational services to school age children any requested education records of juveniles committed to their custody or control. Once such education records are obtained by DYS or other DHR facilities they are confidential and must not be released except as permitted by the Family Educational Rights and Privacy Act. See opinion of C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

ARTICLE 3.

Commitment and Care.

§ 134A-20. Program.

OPINIONS OF ATTORNEY GENERAL

Transfer of Educational Records. — Local school boards can and should transmit to the Division of Youth Services (DYS) and other Department of Human Resources (DHR) agencies providing educational services to school age children any requested education records of juveniles committed to their custody or control. Once such education records are obtained by DYS or other DHR facilities they are confidential and must not be released except as permitted by the Family Educational Rights and Privacy Act. See opinion of C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

Chapter 135.

Retirement System for Teachers and State Employees; Social Security.

Article 1.

Retirement System for Teachers and State Employees.

Sec.
135-5. Benefits.

Article 3.

Other Teacher, Employee Benefits.

Part 3. Comprehensive Major Medical Plan.

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ARTICLE 1.

Retirement System for Teachers and State Employees.

§ 135-5. Benefits.

(a) Service Retirement Benefits. —

(1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of membership service or shall have completed 30 years of creditable service.

(2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an employee other than as a law-

enforcement officer shall continue to have the right to commence retirement.

(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made written application for long-term or extended short-term benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan's Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of notification of the rejection to convert his application to an early or service retirement application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, whichever is later.

(a1) Early Service Retirement Benefits. — Any member may retire and receive a reduced retirement allowance upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service.

(b) Service Retirement Allowances of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and

(3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:

   a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and

   b. The pension which would have been provided on account of such contributions at age 65, or at his retirement age, whichever is the earlier age.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4,800) plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars ($4,800), multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b2) Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b3) Service Retirement Allowances of Members Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after

his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) If the member's service retirement date occurs before his sixty-second birthday but on or after his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1975. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1975, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b5) Service Retirement Allowance of Members Retiring on or after July 1, 1975, but prior to July 1, 1977. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1975, but prior to July 1, 1977, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b6) Service Retirement Allowance of Members Retiring on or after July 1, 1977, but prior to July 1, 1980. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, but prior to July 1, 1980, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b7) Service Retirement Allowance of Members Retiring on or after July 1, 1980, but prior to July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1980, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after

his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2) above.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b8) Service Retirement Allowance of Law-Enforcement Officers Retiring on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985]. — Upon retirement from service, in accordance with subsection (a) of this section, on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985], a member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

(1) A member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in a. above, but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(2) A member who is not a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and fifty-eight hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 or more years of creditable service, his retirement allowance shall be computed as in a. above but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's service retirement date occurs before his 60th birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in b. above.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible

former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1993. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1993, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b., c., and d.

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1993, but before July 1, 1994. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1993, but before July 1, 1994, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, the allowance shall be computed as in G.S. 135-5(b14)(1)a., but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 135-5(b14)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's service retirement date occurs before his 60th birthday and prior to the completion of 30 or more years of creditable service, the service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b14)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b15)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b15)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (1⁄4 of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance provided by G.S. 135-5(b14)(2)c.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b16) Service Retirement Allowance of Members Retiring on or After July 1, 1995. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b16)(1)a. reduced by one-third of one percent (1⁄3 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of creditable service.
  b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b16)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
  c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
    1. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
    2. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
    3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b16)(2)b.
  d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988. — The provisions of this subsection shall not be applicable to members in service on or after January 1, 1988. Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

(1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

(2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a fifty percent (50%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and

(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;

(2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent to the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.

(2) Notwithstanding the foregoing provisions,

  a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 135-5(d2);

  b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and

  c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982, Who Left Service prior to January 1, 1988. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member who left service prior to January 1, 1988 shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired for Disability. — The provisions of this subsection shall be applicable to members retired on a disability retirement allowance and shall not be applicable to members in service on or after January 1, 1988. Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

(1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months of service in the final 48 months prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable. Provided, the provisions of this subdivision shall not apply to beneficiaries of the Law-Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

(2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability; provided that, on and after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and, in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be

restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a. below reduced by the amount in b. below:

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

The Director of the State Retirement System shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law-Enforcement Officers' Retirement System at the time of the transfer of law-

enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law-Enforcement Officers' Retirement System and becomes employed as an employee other than as a law-enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this subsection. Any beneficiary as hereinbefore described who becomes employed as a law-enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this subsection.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(f) Return of Accumulated Contributions. — Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher. Notwithstanding any other provision of law to the contrary, a member who is a beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of this Chapter and who is receiving disability benefits under the transition provisions as provided in G.S. 135-112, shall not be prohibited from receiving a return of accumulated contributions as provided in this subsection.

(f1) Expired.

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, any member having elected Options 2, 3, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1. (a) In the Case of a Member Who Retires prior to July 1, 1963. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963, but prior to July 1, 1993. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1⁄120 thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option 5. For Members Retiring Prior to July 1, 1993. — The member may elect to receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1⁄120 thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947. — Prior to July 1, 1947, all benefits payable as of February 22, 1945, shall be computed on the basis of the provisions of Chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the Board of Trustees may adopt, the provisions of this Article as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserve between the funds of the Retirement System as may be required by the provisions of this subsection.

(i) Restoration to Service of Certain Former Members. — If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this Chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

(1) If such retired member has not made an election of an optional allowance in accordance with G.S. 135-5(g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen percent (15%) thereof, or by fifteen dollars ($15.00), whichever is the lesser; provided that, if such member had rendered not less than 20 years of creditable service, the retirement allowance payable to him

from and after July 1, 1959, shall be not less than seventy dollars ($70.00) per month.

(2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
and so on concluding with	
Year 1942	29%

The minimum increase pursuant to this subsection (k) shall be ten dollars ($10.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(*l*) Death Benefit Plan. — There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars ($25,000) and to a maximum of fifty thousand dollars ($50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (*l*) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

(1) After December 31, 1968 and after he has attained age 70; or

(2) After December 31, 1969 and after he has attained age 69; or

(3) After December 31, 1970 and after he has attained age 68; or

(4) After December 31, 1971 and after he has attained age 67; or

(5) After December 31, 1972 and after he has attained age 66; or

(6) After December 31, 1973 and after he has attained age 65; or

(7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.

(2) Last day of actual service shall be:
  a. When employment has been terminated, the last day the member actually worked.
  b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).

(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).

(4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(*l*1) Reciprocity of Death Benefit Plan. — Only for the purpose of determining eligibility for the death benefit provided for in subsection (*l*) of this section, membership service standing to the credit of a member of the Legislative Retirement System or the Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time. In no event shall a death benefit provided for in G.S. 135-5(*l*) be paid if a death benefit is paid under G.S. 135-63.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that the following conditions apply:

(1) a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or

b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b16)(1)b. or G.S. 135-5(b16)(2)c., notwithstanding the requirement of obtaining age 50.

(2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.

(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (*l*) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

(n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(o) Post-Retirement Increases in Allowances. — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum, but not more than four per centum (4%); provided that any such increase in allowances shall become effective only if the additional liabilities on account of such increase do not require an increase in the total employer rate of contributions.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

Notwithstanding the above paragraphs, retired members and beneficiaries may receive cost-of-living increases in retirement allowances if active members of the system receive across-the-board cost-of-living salary increases. Such increases in post-retirement allowances shall be comparable to cost-of-living salary increases for active members in light of the differences between the statutory payroll deductions for State retirement contributions, Social Security taxes, State income withholding taxes, and federal income withholding taxes required of each group. The increases for retired members shall include the cost-of-living increases provided in this section. The cost-of-living increases allowed retired and active members of the system shall be comparable when each group receives an increase that has the same relative impact upon the net disposable income of each group.

(p) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967. — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1963 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o).

(q) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1970. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1970, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Year(s) in Which Benefits Commenced	*Percentage*
1969	1
1968	4
1967	6
1965 through 1966	9
1964	12
1963	14
1959 through 1962	17
1942 through 1958	22

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (o).

(r) Notwithstanding anything herein to the contrary, effective July 1, 1973, any member who retired after attaining the age of 60 with 15 or more years of creditable service shall receive a monthly benefit of no less than seventy-five dollars ($75.00) prior to the application of any optional benefit.

(s) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (o).

(t) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(u) Repealed by Session Laws 1975, c. 875, s. 47.

(v) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 135-5(o) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System unless the 1975 Session of the General Assembly provides an appropriation to fund this provision.

(x) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1976, which shall become payable on July 1, 1977, and to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the years beginning July 1, 1977, and July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(z) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1975. — From and after July 1, 1977, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1975, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly retirement allowances as of July 1, 1977, have been increased to the extent provided for in the preceding subsection (o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(aa) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(bb) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (cc) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(cc) Increases in Benefits to Those Persons Who Were Retired Prior to July 1, 1977. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1977, shall be increased by a percentage in accordance with the following schedule:

Period in Which Benefits Commenced	*Percentage*
On or before June 30, 1963	10%
July 1, 1963, to June 30, 1968	7%
July 1, 1968, to June 30, 1977	2%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(dd) From and after July 1, 1981, the retirement allowance to or on account of the beneficiaries whose retirement commenced prior to July 1, 1980, shall be increased by three percent (3%). These increases shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (ee) of this section.

(ee) Adjustment in Allowances Paid Beneficiaries Whose Retirement Commenced Prior to July 1, 1980. — From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (dd) of this section.

(ff) From and after July 1, 1982, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1981, shall be increased by one-tenth of one percent (0.1%) of the allowance payable on July 1, 1981.

(gg) From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by two and one-half percent (2.5%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (o) of this section, plus an additional one and one-half percent (1.5%) of the allowance payable on July 1, 1982, in order to supplement the increase payable in accordance with subsection (o) of this section.

(hh) Notwithstanding any other provision of this Chapter, from and after July 1, 1983, the retirement allowance payable to each teacher and State employee, who retired prior to July 1, 1973, and who is in receipt of a reduced retirement allowance based upon 30 or more years of contributing membership service, shall be increased by the elimination of the reduction factors applicable at the time of their retirement under G.S. 135-3(8) or G.S. 135-5(b3). The provisions of this subsection shall apply equally to the allowance of a surviving annuitant of a beneficiary.

(ii) From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1983, in accordance with G.S. 135-5(o), plus an additional four and two-tenths percent (4.2%) of the allowance payable on July 1, 1983.

(jj) Increase in Allowance Where Retirement Commenced on or before July 1, 1984, or after that Date, but before June 30, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(kk) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable under subsection (o) of this section or otherwise granted by act of the 1985 Session of the General Assembly.

(*ll*) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(mm) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(nn) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(oo) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988. — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(pp) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(qq) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(rr) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ss) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(tt) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992. — From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(uu) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(vv) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1993. — From and after July 1, 1993, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1993, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1993. This allowance shall be calculated on the allowance payable and in effect on June 30, 1993, so as not to be compounded on any other increase granted by act of the 1993 General Assembly.

(ww) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(xx) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase granted by act of the 1993 General Assembly, 1994 Regular Session.

(yy) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(zz) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(aaa) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase granted by act of the 1995 General Assembly.

(bbb) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 135-5(o). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3; 1965, c. 780, s. 1; 1967, c. 720, ss. 4-10; c. 1223; 1969, c. 1223, ss. 2, 5-12; 1971, c. 117, ss. 11-15; c. 118, ss. 3-7; 1973, c. 241, ss. 3-7; c. 242, ss. 2-4; c. 737, s. 2; c. 816, s. 2; c. 994, ss. 1, 3; c. 1312, ss. 1-3; 1975, c. 457, ss. 2-4; c. 511, ss. 1, 2; c. 634, ss. 1, 2; c. 875, s. 47; 1977, c. 561; c. 802, ss. 50.65-50.70; 1979, c. 838, s. 99; c. 862, ss. 1, 4, 5; c. 972, s. 4; c. 975, s. 1; 1979, 2nd Sess., c. 1137, ss. 63, 64, 66; c. 1196, s. 1; c. 1216; 1981, c. 672, s. 1; c. 689, s. 2; c. 859, ss. 42, 42.1, 44; c. 940, s. 1; c. 975, s. 3; c. 978, ss. 1, 2; c. 980, ss. 3, 4; 1981 (Reg. Sess., 1982), c. 1282, s. 11; 1983, c. 467; c. 761, ss. 218, 219, 228, 229; c. 902, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c.

1034, ss. 222, 232-235, 237; c. 1049, ss. 1-3; 1985, c. 348, s. 2; c. 479, ss. 189(a), 190, 191, 192(a), 194; c. 520, s. 2; c. 649, ss. 8, 10; 1985 (Reg. Sess., 1986), c. 1014, s. 49(a); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(a), 29(c)-(j), 37(a); c. 824, s. 3; 1987 (Reg. Sess., 1988), c. 1061, s. 1; c. 1086, s. 22(a); c. 1108, s. 1; c. 1110, ss. 1-3; 1989, c. 717, ss. 1-6; c. 731, s. 1; c. 752, s. 41(a); c. 770, s. 31; c. 792, ss. 3.1-3.3; 1989 (Reg. Sess., 1990), c. 1077, ss. 2-5; 1991 (Reg. Sess., 1992), c. 766, s. 2; c. 900, ss. 52(a)-(c), 53(b); 1993, c. 321, ss. 74(c)-(e), 74.1(e), (f), 74.2(a); c. 531, s. 5; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(g)-(j), (m), (r); 1995, c. 507, ss. 7.22(a), 7.23(a), (b), 7.23A(a), (b); c. 509, ss. 74, 75; 1996, 2nd Ex. Sess., c. 18, s. 28.21(a).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective July 1, 1996, added subsection (bbb).

ARTICLE 3.

Other Teacher, Employee Benefits.

Part 3. Comprehensive Major Medical Plan.

§ 135-40. Undertaking.

OPINIONS OF ATTORNEY GENERAL

Medical Child Support Enforcement Provisions. — The medical child support enforcement provisions of House Bill 1563, 1993 (Reg. Sess. 1994) N.C. Session Laws c. 644, are inapplicable to the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan and the governmental entities whose employees and retirees, along with their dependents, are eligible for coverage under the Plan or its HMO option. Medical child support orders nonetheless may be enforced directly against State employees and retirees who fail to enroll, or maintain coverage for, their eligible dependent children under the State Health Plan in accordance with the provisions of §§ 50-13.4(f), 50-13.9 and 50-13.11. See opinion of Attorney General to Patricia Crawford, Associate General Counsel, University of North Carolina at Chapel Hill, — N.C.A.G. — (August 10, 1995).

§ 135-40.1. General definitions.

As used in Parts 2 and 3 of this Article, the following terms have the meaning specified as follows:

(1) Chemical Dependency. — The term "chemical dependency" means the pathological use or abuse of alcohol or other drugs in a manner or to a degree that produces an impairment in personal, social or occupational functioning and which may, but need not, include a pattern of tolerance and withdrawal.

(1a) Covered Services. — Any medically necessary, reasonable, and customary items of service, at least a portion of the expense of which is covered under at least one of the plans covering the person for whom claim is made or service provided. To the extent legally possible, it shall be synonymous with allowable expenses.

(2) Deductible. — Deductible shall mean an amount of covered expenses during a fiscal year which must be incurred after which benefits (subject to the deductible) becomes payable. The deductible for an employee, retired employee and/or his or her dependents shall be two hundred fifty dollars ($250.00) for each fiscal year.

The deductible applies separately to each covered individual in each fiscal year, subject to an aggregate maximum of seven hundred fifty dollars ($750.00) per family (employee or retiree and his or her covered dependents) in any fiscal year.

If two or more family members are injured in the same accident only one deductible is required for charges related to that accident during the benefit period.

(3) Dependent Child. — A natural, legally adopted, or foster child of the employee and/or spouse, unmarried, up to the first of the month following his or her 19th birthday, whether or not the child is living with the employee, as long as the employee is legally responsible for such child's maintenance and support. Dependent child shall also include any child under age 19 who has reached his or her 18th birthday, provided the employee was legally responsible for such child's maintenance and support on his or her 18th birthday.

A foster child is covered (i) if living in a regular parent-child relationship with the expectation that the employee will continue to rear the child into adulthood, (ii) if at the time of enrollment, or at the time a foster child relationship is established, whichever occurs first, the employee applies for coverage for such child and submits evidence of a bona fide foster child relationship, identifying the foster child by name and setting forth all relevant aspects of the relationship, (iii) if the Claims Processor accepts the foster child as a participant through a separate written document identifying the foster child by name and specifically recognizing the foster child relationship, and (iv) if at the time a claim is incurred, the foster child relationship, as identified by the employee, continues to exist. Children placed in a home by a welfare agency which obtains control of, and provides for maintenance of, the child(ren), are not eligible participants.

Coverage may be extended beyond the 19th birthday under the following conditions:

a. If the dependent is a full-time student, between the ages of 19 and 26, who is pursuing a course of study that represents at least the normal workload of a full-time student at a school or college accredited by the state of jurisdiction.

b. The dependent is physically or mentally incapacitated to the extent that he or she is incapable of earning a living and (i) such handicap developed or began to develop before the dependent's 19th birthday, or (ii) such handicap developed or began to develop before the dependent's 26th birthday if the dependent was covered by the Plan in accordance with G.S. 135-40.1(3)a.

(4) Doctor. — A doctor of medicine, a doctor of osteopathy licensed to practice medicine or surgery by the Board of Medical Examiners of the state in which he or she practices, a doctor of dentistry, a doctor of podiatry or surgical chiropody, a doctor of optometry, a doctor of chiropractic, or a doctor of psychology who is licensed or certified in the State and has a doctorate practice degree in psychology and at least two years' clinical experience in a recognized health setting or has met the standards of the National Register of Health Services Providers in Psychology, each of whom is licensed to practice by the state in which he or she performs any service covered by this Plan, and who regularly charges and collects fees in his or her own right.

(5) Employee. — Any permanent full-time or permanent part-time regular employee (designated as half-time or more) of an employing unit.

(6) Employing Unit. — A North Carolina School System; Community College; State Department, Agency or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in a State-Supported Retirement System. An employing unit also shall mean a charter school in accordance with Part 6A of Chapter 115C of the General Statutes whose employees are deemed to be public employees and members of a State-Supported Retirement System.

(7) Enrollment. — New employees must enroll themselves and their dependents within 30 days from the date of employment. Coverage may become effective on the first day of the month following date of entry on payroll or on the first day of the following month. New employees not enrolling themselves and their dependents within 30 days, or not adding dependents when first eligible as provided herein may enroll on the first day of any month but will be subject to a 12-month waiting period for preexisting health conditions, except for employees who elect to change their coverage in accordance with rules established by the Executive Administrator and Board of Trustees for optional prepaid hospital and medical benefit plans. Children born to covered employees having coverage type (2), or (3), as outlined in G.S. 135-40.3(d) shall be automatically covered at the time of birth without any waiting period for preexisting health conditions. Children born to covered employees having coverage type (1) shall be automatically covered at birth without any waiting period for preexisting health conditions so long as the Claims Processor receives notification within 30 days of the date of birth that the employee desires to change from coverage (1) to coverage type (2), or (3), provided that the employee pays any additional premium required by the coverage type selected retroactive to the first day of the month in which the child was born.

(7.1) Experimental/Investigational Medical Procedures. — The use of any treatment, procedure, facility, equipment, drug, device, or supply not recognized as having scientifically established medical value nor accepted as standard medical treatment for the condition being treated as determined by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor, nor any such items requiring federal or other governmental agency approval not granted at the time services were rendered. The Executive Administrator and Board of Trustees may overturn the advice of the Claims Processor upon convincing evidence from the American Medical Association, North Carolina Medical Society, the United States Health Care Financing Administration, medical technological journals, associations of health care providers, and other major United States insurers of health care expenses on a consensus of medical value and accepted standard medical treatment.

(7a) Fiscal Year. — The period beginning July 1 and ending on June 30 of the succeeding calendar year.

(8) Health Benefits Representative. — The employee designated by the employing unit to administer the Comprehensive Major Medical Plan for the unit and its employees. The HBR is responsible for enrolling new employees, reporting changes, explaining benefits, reconciling group statements and remitting group fees.

(9) Home Health Aide. — An individual who provides medical or therapeutic care and who reports to and is under the direct supervision of a Home Health Care Agency.

(10) Home Health Care Agency. — An agency which is constituted, licensed and operated in accordance with the laws pertaining to agencies providing home health care.

(11) Home Health Care Coverage. — Coverage for home care and treatment established and approved in writing by a physician who certifies that continual hospital confinement would be required without the care and treatment specified by this coverage.

(12) Hospital. — An institution which meets fully all the following criteria:
   a. A general medical and surgical hospital, including eye, ear, nose and throat, maternity, pediatric, tuberculosis, or mental hospital, licensed as such by the applicable State agency.
   b. It is primarily engaged in providing — for compensation from its patients and on an inpatient basis — diagnostic and therapeutic facilities for the surgical and medical diagnosis, treatment and care of injured and sick persons by or under the supervision of the staff of physicians;
   c. It continuously provides 24-hour-a-day nursing service by registered graduate nurses; and
   d. It is not, other than incidentally, a place for rest, a place for the aged, a place for drug addicts, a place for alcoholics, a nursing home, a hotel, or the like. Hospitals classified and accredited as psychiatric hospitals by the Joint Commission on Accreditation of Healthcare Organizations will be deemed to be hospitals for the purpose of this Plan.

(13) Medicare. — The Health Insurance for the Aged and Disabled Program under Title XVIII of the Social Security Act as such act was amended by the Social Security Amendments of 1965 (Public Law 89-97), as such program is currently constituted and as it may be later amended.

(13a) Plan. — The Teachers' and State Employees' Comprehensive Major Medical Plan.

(14) Predecessor Plan. — The Hospital and Medical Benefits for the Teachers' and State Employees' Retirement System of the State of North Carolina.

(15) Preexisting Condition. — A condition, disease, illness or injury diagnosed and treated within six months prior to the effective date of coverage.

(16) Pregnancy. — Shall include resulting childbirth, miscarriage or abortion.

(17) Retired Employee (Retiree). — Retired teachers, State employees, and members of the General Assembly who are receiving monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State of North Carolina, so long as the retiree is enrolled. On and after January 1, 1988, a retiring employee or retiree must have completed at least five years of contributory retirement service with an employing unit prior to retirement from any State-supported retirement system in order to be eligible for group benefits under this Part as a retired employee or retiree.

(18) Skilled Nursing Facility. — An institution licensed under applicable State laws and primarily engaged in providing to inpatients, under the supervision of a doctor and a registered professional nurse, skilled nursing care and related services on a 24-hour basis, and rehabilitative services.

(19) Usual, Customary and Reasonable. — The meaning of the term "UCR" shall be developed from criteria used for determining reasonable charges for services, including usual preoperative examination and customary postoperative care and care of usual complications, and shall be based on the usual charge made by an individual doctor for his or her private patients for a particular service, or the customary charge within the range of usual fees charged by most doctors of similar skill and training in North Carolina for the comparable service, whichever is the lower. A fee is reasonable if it meets the above two criteria. In cases of unusual complexity and cases involving supplemental skills of two or more doctors, reasonable charges will be determined by the Claims Processor upon advice of its medical advisors. The Executive Administrator and Board of Trustees may update usual, customary and reasonable charges, or other such comparable allowances, semi-annually for physicians who accept the Plan's UCR or other comparable allowances as payment in full, other than for the Plan's deductibles, coinsurance, or other amounts to be paid by members of the Plan; otherwise, the Executive Administrator and Board of Trustees shall not update usual, customary and reasonable charges, or other such comparable allowances more frequently than on an annual basis. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 4, 21.1, 21.2, 21.7; 1983 (Reg. Sess., 1984), c. 1110, s. 10; 1985, c. 192, ss. 7, 16.1, 16.2; c. 732, ss. 12, 19, 25, 26; 1985 (Reg. Sess., 1986), c. 1020, ss. 5(a), 9, 20, 24, 27; 1987, c. 564, s. 17; c. 857, ss. 9, 10; 1989, c. 752, s. 22(c), (d); 1991, c. 427, ss. 1(a), 9, 18, 36; 1995 (Reg. Sess., 1996), c. 731, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 28.23(a).)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 731, s. 1, provides that this act shall be known as the Charter Schools Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 731, s. 4, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act. In addition, all charters granted and all contracts entered into under this act are subject to any future appropriations and subsequent legislative changes."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 731, s. 3, effective June 21, 1996, added the last sentence of subdivision (6).

Session Laws 1996, Second Extra Session, c. 18, s. 28.23(a), effective July 1, 1995, substituted "diagnosed and treated within six months" for "which existed or had its beginning to any degree, whether diagnosed or not" in subdivision (15).

§ 135-40.3. Effective dates of coverage.

(a) Employees and Retired Employees. —

(1) Employees and retired employees covered under the Predecessor Plan will continue to be covered, subject to the terms hereof.

(2) New employees may apply for coverage to be effective on the first day of the month following employment, or on a like date the following month if the employee has enrolled.

(3) Employees not enrolling or adding dependents when first eligible in accordance with G.S. 135-40.1(7) may enroll later on the first of any following month but will be subject to a 12-month waiting period for a preexisting health condition, except employees who elect to change their coverage in accordance with rules adopted by the Executive Administrator and Board of Trustees for optional prepaid hospital and medical benefit plans.

(4) Members of the General Assembly, beginning with the 1985 Session, shall become first eligible with the convening of each Session of the General Assembly, regardless of a Member's service during previous Sessions. Members and their dependents enrolled when first eligible after the convening of each Session of the General Assembly will not be subject to any waiting periods for preexisting health conditions. Members of the 1983 Session of the General Assembly, not already enrolled, shall be eligible to enroll themselves and their dependents on or before October 1, 1983, without being subject to any waiting periods for preexisting health conditions.

(b) Waiting Periods and Preexisting Conditions. —

(1) New employees and dependents enrolling when first eligible are subject to no waiting period for preexisting conditions under the Plan.

(2) Employees not enrolling or not adding dependents when first eligible may enroll later on the first of any following month, but will be subject to a twelve-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section.

(3) Retiring employees and dependents enrolled when first eligible after an employee's retirement are subject to no waiting period for preexisting conditions under the Plan. Retiring employees not enrolled or not adding dependents

when first eligible after an employee's retirement may enroll later on the first of any following month, but will be subject to a 12-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section.

(4) Employees and dependents reenrolled within 12 months after a termination of enrollment, regardless of the employing units involved, shall not be considered as newly-eligible employees or dependents for the purposes of waiting periods and preexisting conditions. Employees and dependents transferring from optional prepaid plans in accordance with G.S. 135-39.5B; employees and dependents immediately returning to service from an employing unit's approved periods of leave without pay for illness, injury, educational improvement, workers' compensation, parental duties, or for military reasons; employees and dependents immediately returning to service from a reduction in an employing unit's work force; retiring employees and dependents reenrolled in accordance with G.S. 135-40.3(b)(3); formerly-enrolled dependents reenrolling as eligible employees; formerly-enrolled employees reenrolling as eligible dependents; and employees and dependents reenrolled without waiting periods and preexisting conditions under specific rules and regulations adopted by the Executive Administrator and Board of Trustees in the best interests of the Plan shall not be considered reenrollments for the purpose of this subdivision. Furthermore, employees accepting permanent, full-time appointments who had previously worked in a part-time or temporary position and their qualified dependents shall not be covered by waiting periods and preexisting conditions under this division provided enrollment as a permanent, full-time employee is made when the employee and his dependents are first eligible to enroll.

(5) To administer the 12-month waiting period for preexisting conditions under this Article, the Plan must give credit against the 12-month period for the time that a person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 60 days before the effective date of coverage. As used in this subdivision, a "previous plan" means any policy, certificate, contract, or any other arrangement provided by any accident and health insurer, any hospital or medical service corporation, any health maintenance organization, any preferred provider organization, any multiple employer welfare arrangement, any self-insured health benefit arrangement, any governmental health benefit or health care plan or program, or any other health benefit arrangement.

(c) Dependents of Employees and Retired Employees. —

(1) Dependents of employees and retired employees who have family coverage under the Predecessor Plan will continue to be covered subject to the terms hereof.

(2) Employees who have dependents may apply for family coverage at the time they enroll as provided in subdivisions (a)(2) and (a)(3) and such dependents will be covered under the Plan beginning the same date as such employees.

(3) Employees and retired employees may change from individual to family coverage upon written application at any time

after acquiring a dependent, and such dependent will be covered under the Plan beginning the first of the next calendar month following receipt of such application by the Claims Processor.

(4) Employees who wish to change from family coverage to individual coverage shall give written notice to the Claims Processor within 31 days after any change in the status of dependents, (resulting from death, divorce, etc.) which requires a change from family coverage to individual coverage.

(5) Employees not adding dependents when first eligible may enroll later on the first of any following month, but dependents will be subject to a 12-month waiting period for preexisting health conditions except as provided in subdivision (a)(3) of this section.

(d) Types of Coverage Available. — There are three types of coverage which an employee or retiree may elect.

(1) Employee Only. — Covers enrolled employees only. Maternity benefits are provided to employee only.

(2) Employee and Child(ren). — Covers enrolled employee and all eligible dependent children. Maternity benefits are provided to the employee only.

(3) Employee and Family. — Covers employee and spouse, and all eligible dependent children. Maternity benefits are provided to employee or enrolled spouse.

(4), (5) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 5(b), effective January 1, 1987.

(e) Notwithstanding any other provision of this section, no coverage under the Plan shall become effective prior to the payment of premiums required by the Plan. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1020, ss. 5(b), 20; 1987, c. 857, s. 13; 1991, c. 427, ss. 10-12; 1996, 2nd Ex. Sess., c. 18, s. 28.23(b).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1995, added subdivision (b)(5).

§ 135-40.6. Benefits subject to deductible and coinsurance (comprehensive benefits).

The following benefits are subject to a deductible of two hundred fifty dollars ($250.00) per covered individual to an aggregate maximum of seven hundred fifty dollars ($750.00) per family per fiscal year and are payable on the basis of eighty percent (80%) by the Plan and twenty percent (20%) by the covered individual up to a maximum of one thousand dollars ($1,000) out-of-pocket per fiscal year:

(1) In-Hospital Benefits. — The Plan pays in-hospital benefits for each single confinement, when charged by a hospital, for room accommodations, including bed, board and general nursing care, but not to exceed the charge for semiprivate room or ward accommodations, or the rate negotiated for the Plan.

The Plan will pay the following covered charges, when charged by a hospital, for each confinement.

a. Intensive and cardiac nursing care.

b. All recognized drugs and medicines for use in the hospital.

c. Radiation services, including diagnostic x-rays, x-ray therapy, radiation therapy and treatment.

d. Clinical and pathological laboratory examinations.

e. Electrocardiograms and electroencephalograms.

f. Physical therapy.

g. Intravenous solutions.

h. Oxygen and oxygen therapy, plus the use of equipment.

i. Dressings, ordinary splints, plaster casts and sterile supplies.

j. Use of operating, delivery, recovery and treatment rooms and equipment.

k. Routine nursery charges, if the mother is eligible to receive maternity benefits.

l. Anesthetics and the administration thereof by the hospital's employee anesthesiologist.

m. Devices or appliances surgically inserted within the body.

n. Processing and administering of blood and blood plasma.

o. Children are entitled to benefits for treatment of illnesses or congenital defect, incubation or isolette care, and treatment of prematurity or postmaturity.

If the mother is a covered individual, benefits are provided for the newborn's circumcision and routine nursery care.

p. When a covered individual is admitted to or transferred to a section of a hospital providing ambulant, convalescent, or rehabilitative care, benefits are provided up to the average number of days of service for treatment of the particular diagnosis or condition involved, or more if medical necessity requires.

q. The Plan pays benefits for laboratory testing and administration of blood provided to a covered individual.

When a covered individual is the recipient of transplanted organs or bones, benefits are provided for services to the donor which are directly and specifically related to the transplantation.

r. Repealed by Session Laws 1991, c. 427, s. 31, effective January 1, 1992.

s. The use of nebulizers when authorized as medically necessary by the attending physician.

(2) Limitations and Exclusions to In-Hospital Benefits. —

a. The services of physicians, surgeons and technicians not employed by or under contract to the hospital are not covered.

b. Any admission for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis, if no hospitalization would have been required except for such diagnostic services is not covered. However, benefits are provided at eighty percent (80%) of Plan benefits for diagnostic tests and procedures consistent with the symptoms or diagnosis for which admitted.

c. The Plan will not cover any admission to a hospital prior to the effective date of coverage or beginning prior to the expiration of any waiting period so long as the individual remains continuously in a hospital.

d. Hospitalization for custodial, adult care or sanitarium care, or rest cures, is not covered.

e. Hospitalization for dental care and treatment is not covered, except when a hospital setting is medically necessary.

f. Prior to admission for scheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for an inpatient admission, including a length of stay, based upon clinical criteria established by the medical community, before any in-hospital benefits are allowed under G.S. 135-40.8(a). Immediately following an emergency or unscheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for the admission's length of stay before any in-hospital benefits are allowed under G.S. 135-40.8(a). Effective January 1, 1987, failure to secure certification, or denial of certification, shall result in in-hospital benefits being allowed at the rate maximum amount of out-of-pocket expenses established by G.S. 135-40.8(b). Denial of certification by the Plan shall be made only after contact with the admitting physician and shall be subject to appeal to the Executive Administrator and Board of Trustees. Inpatient hospital admission and length of stay certifications required by this subdivision do not apply to inpatient admissions outside of the United States. While approval certification for inpatient admissions is required to be initiated by the admitting physician, the employee or individual covered by the Plan shall be responsible for insuring that the required certification is secured. Failure to secure certification for inpatient hospitalization shall not result in a penalty to the employee or individual when approval would have been given if requested.

g. The Plan does not cover the first fifty dollars ($50.00) of allowable emergency room charges when admission to a hospital pursuant to the emergency room use does not immediately follow. The provisions of this subdivision shall apply only when less costly alternative means of emergency medical care are reasonably available as determined by the Executive Administrator and Board of trustees.

(3) Skilled Nursing Facility Benefits. — The Plan will pay benefits in a skilled nursing facility licensed under applicable State laws as follows:

After discharge from a hospital for which inpatient hospital benefits were provided by this Plan for a period of not less than three days, and treatment consistent with the same illness or condition for which the covered individual was hospitalized, the daily charges will be paid for room and board in a semiprivate room or any multibed unit up to the maximum benefit specified in subsection (1) of this section, less the days of care already provided for the same illness in a hospital. Plan allowances for total daily charges may be negotiated but will not exceed the daily semiprivate hospital room rate as determined by the Plan.

Credit will be allowed toward private room charges in an amount equal to the facility's most prevalent charge for semiprivate accommodations. Charges will also be paid for general nursing care and other services which would ordinarily be covered in a general hospital. In order to be eligible for these benefits, admission must occur within 14 days of discharge from the hospital.

In order to qualify for benefits provided by a skilled nursing facility, the following stipulations apply:

a. The services are medically required to be given on an inpatient basis because of the covered individual's need for skilled nursing care on a continuing basis for any of the conditions for which he or she was receiving inpatient hospital services prior to transfer from a hospital to the skilled nursing facility or for a condition requiring such services which arose after such transfer and while he or she was still in the facility for treatment of the condition or conditions for which he or she was receiving inpatient hospital services,

b. Only on prior referral by and so long as, the patient remains under the active care of an attending doctor who certifies that continual hospital confinement would be required without the care and treatment of the skilled nursing facility, and

c. Approved in advance by the Claims Processor.

For facilities not qualified for delivery of services covered by the benefits of Title XVIII of the Social Security Act (Medicare), neither the Plan nor any of its members shall be billed or held liable by such facilities for charges that otherwise would be covered by Medicare.

(4) Outpatient Benefits. — The Plan pays for services rendered in the outpatient department of a hospital, in a doctor's office, in an ambulatory surgical facility, or elsewhere as determined by the Executive Administrator, as follows:

a. Accidental injury: All covered services. Dental services are excluded except for oral surgery specifically listed in subsection (5)c. of this section.

b. Operative procedures.

c. All hospital services for radiation therapy, treatment by use of x-rays, radium, cobalt and other radioactive substances.

d. Pathological examinations of tissue removed by resection or biopsy. Routine Pap smears are not covered by this subdivision.

e. Charges for diagnostic x-rays, clinical laboratory tests, and other diagnostic tests and procedures such as electrocardiograms and electroencephalograms.

No benefits are provided in this subdivision for screening examinations and routine physical examinations to assess general health status in the absence of specific symptoms of active illness, routine office visits or for doctor's services for diagnostic procedures covered under surgical benefits.

(5) Surgical Benefits. — The Plan pays the usual, customary and reasonable charges for covered surgical services as follows:

a. Surgery: Cutting procedures, treatment of fractures, transfusions, operative preparation for diagnostic x-ray examinations, surgical implantation radiation sources, major endoscopic examinations, biopsies, surgical sterilization, other standard services and operations.

For the purpose of this subdivision, the term "standard services and operations" includes the following organ transplants: liver, heart, corneal, bone marrow, lung, heart-lung, pancreas, and kidney. All other organ transplants shall be considered nonreimbursable under the Plan. Benefits for the above listed organ transplants shall be payable only in accordance with rules established by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees may limit the Plan's reimbursement for selected organ transplants to amounts that would otherwise be allowed in accordance with G.S. 135-40.4.

b. Anesthesia: Administration of general, spinal block or local anesthesia. Covered services include pre- and postoperative visits, the administration of the anesthetic, fluids and/or blood provided by the anesthesiologist and incidental to the anesthesia, and necessary drugs and materials provided by the anesthesiologist. No benefits are provided for administration of local anesthesia or for anesthesia administered by the operating surgeon or surgical assistant(s).

c. Oral Surgery: Services which are within the scope of practice of both a doctor of medicine and a dentist, such as excision of tumors and lesions of the mouth, treatment of jaw fractures and surgery to correct injuries of the mouth structure other than teeth and their supporting structure. Developmental and congenital orthognathic surgery procedures will be covered under the Plan, provided such surgery is medically necessary, is the only method of treatment which will correct the patient's deformity, is not performed for cosmetic reasons, and is approved in advance by the Claims Processor on the basis of the surgeon's documentation that the correction of the deformity is medically necessary for the maintenance of good physical health.

d. Maternity Care: Independent operative procedures in connection with pregnancy, such as: manipulative obstetrical delivery, delivery by Caesarean section, removal of ectopic pregnancy, dilation and curettage. Benefits for manipulative obstetrical delivery include use of forceps and/or episiotomy. No benefits are provided for antepartum or postpartum care, except for direct surgical procedures of delivery and surgical treatment.

e. Surgical Assistants: Services of an assistant surgeon when medical judgment requires the services of an assistant surgeon and no hospital-employed doctor in training is available.

f. Multiple Procedures: When multiple or bilateral surgical procedures are performed by the same doctor through separate incisions or approaches during the same session, the surgical benefits will be the greater UCR allowance, plus fifty percent (50%) of the lesser UCR allowance. Anesthesia benefits will be the greater UCR allowance.

When multiple surgical procedures are performed by the same doctor through the same incision or operative approach, the surgical benefits are limited to the procedure which has the highest UCR allowance.

When a surgical procedure is performed in two or more stages, the surgical benefit for the entire procedure is the same as it would be were the procedure performed in one stage (except where otherwise provided in the benefit schedule). This limitation does not apply to anesthesia benefits.

g. Cleft Palate: Notwithstanding G.S. 135-40.6(6)a and G.S. 135-40.7(11), medical treatment and care needed by an individual born with cleft palate, including specialized dental and orthodontic care necessitated by the congenital condition.

(6) Limitations and Exclusions to Surgical Benefits. —

a. No benefits are provided for dental prostheses such as crowns, or dentures; orthodontic care; operative restoration of teeth (fillings); dental extractions (whether impacted or not impacted); apicoectomies; treatment of dental caries, gingivitis, or periodontal diseases by gingivectomies or other periodontal surgery; vestibuloplasties, alveoplasties, removal of exostosis and tori preparatory to fitting of dentures; correction of malocclusion by orthognathic surgery or other procedures by repositioning of bone tissue except as permitted pursuant to G.S. 135-40.6(5)c; removal of cysts incidental to apicoectomies or extraction of teeth.

b. Cosmetic surgery or surgery solely for beautifying purposes is not covered, except for procedures related to injury sustained while the individual is continuously covered under the Plan.

c. If a covered individual is admitted for medical and surgical treatment for the same condition, by the same doctor, either medical or surgical care may be paid, whichever is greater, but not both.

d. When a covered individual is admitted for medical treatment and during the hospital admission is subsequently referred to another doctor for surgery, medical benefits are provided for hospital days prior to the date of referral.

e. If during the hospital admission for necessary medical treatment, surgery is provided for a wholly distinct and unrelated condition, both medical and surgical benefits are payable, however, the same doctor may not be paid both medical and surgical benefits provided on the same day.

f. If during hospital admission for necessary medical treatment, a covered individual receives related surgical procedures such as paracentesis, biopsy, endoscopy, operative preparation for x-ray examination, or other diagnostic procedures for which benefits are applicable under the surgical benefits section of the Plan, both medical and surgical benefits are payable.

g. No benefits are provided for concurrent co-attending medical and surgical care by two or more doctors for the same condition other than as provided above.

h. No benefits will be payable for surgical procedure specifically listed by the American Medical Association or the North Carolina Medical Association as having no medical value.

i. No benefits are payable for organ transplants not listed in G.S. 135-40.6(5)a, nor will benefits be payable for surgical procedures determined in the opinion of the Claims Processor to be experimental.

j. No benefits are payable for radial keratotomy surgical procedures.

(7) Medical Benefits. —

a. Services of Doctors. — The Plan pays the usual, reasonable and customary charges for covered inpatient medical (nonsurgical) services. Services are covered if the individual is hospital-confined and is eligible for hospitalization benefits as described in this section. Benefits are provided for exactly the same number of days as the individual is entitled to under this section, except that medical benefits are provided on both the day of admission and the day of discharge.

In the event a covered individual is treated by two or more co-attending doctors during the same hospital confinement for a medical (nonsurgical) condition, benefits are limited to payment for services provided by the primary attending doctor, except where need is established for supplementary skills for treatment of separate and distinct diagnoses or conditions.

Home, office, and skilled nursing facility visits including (i) charges for injected medications, (ii) inpatient care by attending medical doctors, radiologists, pathologists, and consultants during such time as hospital benefits are paid under any section of this Plan, (iii) care in the outpatient department of a hospital, and (iv) administration of shock therapy (drug or electric) including the services of anesthesiologists provided on an office or hospital outpatient basis for treatment of acute psychotic reaction or severe depression. The Plan does not cover the first ten dollars ($10.00) of allowable charges for each home, office, or skilled nursing facility visit.

b. Consultations. — Consultation services are provided when requested by attending doctor and the consultation is necessary in conjunction with and directly related to care and treatment of the condition for which admitted. No benefits are provided for staff consultation required by hospital rules and regulations. When a covered individual is admitted for oral surgery, a single consultation allowance will be provided for medical examination and pre-anesthesia evaluation.

c. Newborn Care. — When a child is eligible at birth, benefits are provided for treatment of illness, injury, prematurity, or congenital condition as a registered inpatient. When delivery is by Caesarean section, a single consultation allowance will be provided for standby, resuscitation, and infant care in the operating room provided by a doctor other than the operating surgeon.

When a mother receives maternity benefits under the Plan for a child's delivery, benefits are provided for examination and supervision of a normal newborn infant.

d. Repealed by Session Laws 1991, c. 427, s. 31, effective January 1, 1992.

(8) Other Covered Charges. —

a. Prescription Drugs: The Plan's allowable charges for prescription legend drugs to be used outside of a hospital or skilled nursing facility are ninety percent (90%) of the average wholesale price. A dispensing fee for qualified providers shall be determined by the Executive Administrator and Board of Trustees. The Plan will pay allowable charges for each outpatient prescription drug less a copayment to be paid by each covered individual equal to the provider dispensing fee set by the Executive Administrator and Board of Trustees. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though prescription is not required.

b. Private Duty Nursing: Services of licensed nurses (not immediate relatives or members of the participant's household or private duty nursing used in lieu of or as a substitute for hospital staff nurses) ordered by the attending doctor for a condition requiring skilled nursing services. Private Duty Nursing ordered must be approved in advance by the Claims Processor as medically necessary. Allowances for Private Duty Nursing shall not exceed the Plan's usual, customary and reasonable allowances or ninety percent (90%) of the daily semiprivate rate at skilled nursing facilities as determined by the Plan.

c. Home Health Agency Services: Services provided in a covered individual's home, when ordered by the attending physician who certifies that hospital or skilled nursing facility confinement would be required without such treatment and cannot be readily provided by family members. Services may include medical supplies, equipment, appliances, therapy services (when provided by a qualified speech therapist or licensed physiotherapist), and nursing services. Nursing services will be allowed for:

1. Services of a registered nurse (RN); or
2. Services of a licensed practical nurse (LPN) under the supervision of a RN; or
3. Services of a home health aide under the supervision of a RN, limited to four hours a day.

Home health services shall be limited to 60 days per fiscal year, except that additional home health services may be provided on an individual basis if prior approval is obtained from the Claims Processor. Plan allowances for home health services shall be limited to licensed or Medicare certified home health agencies and shall not exceed ninety percent (90%) of the skilled nursing facility semiprivate rates as determined by the Plan, or charges negotiated by the Plan.

d. Licensed Ambulance Service: Local ambulance transportation:

1. To or from a hospital for inpatient care or outpatient accident care;
2. From a hospital to the nearest facility able to provide needed services not available at the transferring hospital; or
3. From a hospital to a skilled nursing facility.

The word "local" means ambulance transportation of not more than 50 miles unless the Claims Processor authorizes ambulance transportation beyond this distance.

e. Prosthetic and Orthopedic Appliances and Durable Medical Equipment: Appliances and equipment including corrective and supportive devices such as artificial limbs and eyes, wheelchairs, traction equipment, inhalation therapy and suction machines, hospital beds, braces, orthopedic corsets and trusses, and other prosthetic appliances or ambulatory apparatus which are provided solely for the use of the participant. Eligible charges include repair and replacement when medically necessary. Benefits will be provided on a rental or purchase basis at the sole discretion of the Claims Processor and agreements to rent or purchase shall be between the Claims Processor and the supplier of the appliance.

For the purposes of this subdivision, the term "durable medical equipment" means standard equipment normally used in an institutional setting which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury and is appropriate for use in the home. Decisions of the Claims Processor, the Executive Administrator and Board of Trustees as to compliance with this definition and coverage under the Plan shall be final.

f. Dental Services: Oral surgery, including extraction of teeth, necessitated because of medical treatment. Dental surgery and appliances for mouth, jaw, and tooth restoration necessitated because of external violent and accidental means, such as the impact of moving body, vehicle collision, or fall occurring while an individual is covered under G.S. 135-40.3. No benefits are provided in connection with injury incurred in the act of chewing, nor for damage or breakage of an appliance such as bridge or denture being cleaned or otherwise not in normal mouth usage at the time of accident, nor for appliances for orthodontic treatment when a class of malocclusion, other than orthognathic, or cross bite has been diagnosed. Benefits for temporomandibular joint (TMJ) disfunction appliance therapy are limited to cases where the TMJ disfunction has been diagnosed as solely resulting from accidental means as certified by the attending practitioner and approved by the Claims Processor.

Benefits shall include extractions, fillings, crowns, bridges, or other necessary therapeutic and restorative techniques and appliances to reasonably restore condition and function to that existing immediately prior to the accident. Injury or breakage of existing appliances such as bridges and dentures is limited to repair of such appliances unless certified as damaged beyond repair.

g. Medical Supplies: Colostomy bags, catheters, dressings, oxygen, syringes and needles, and other similar supplies.

h. Blood: Transfusions including cost of blood, plasma, or blood plasma expanders.

i. Physical Therapy: Recognized forms of physical therapy for restoration of bodily function, provided by a doctor, hospital, or by a licensed professional physiotherapist. No benefits are provided for eye exercises or visual training.

j. Inhalation Therapy: When provided by a doctor, hospital, or other organization.

k. Speech Therapy: Speech therapy provided by certified speech therapist.

l. Cataract Lenses: Cataract lenses prescribed as medically necessary for aphakia persons, including charges for necessary examinations and fittings. Benefits will be limited to one set of cataract lenses every 24 months for persons 18 years of age or older, and one set of cataract lenses every 12 months for persons less than 18 years of age.

m. Cardiac Rehabilitation: Charges not to exceed six hundred fifty dollars ($650.00) per fiscal year for cardiac testing and exercise therapy, when determined medically necessary by an attending physician and approved by the Claims Processor for patients with a medical history of myocardial infarction, angina pectoris, arrhythmias, cardiovascular surgery, hyperlipidemia, or hypertension, provided such charges are incurred in a medically supervised facility fully certified by the North Carolina Department of Human Resources.

n. Chiropractic Services: Limited to the alignment of the spine and releasing of pressure by manipulation in accordance with the definitions in G.S. 90-143. Maximum benefits for x-rays, manipulations, and modalities shall be two thousand dollars ($2,000) per fiscal year.

o. Foot Surgery: All foot surgery on bones and joints in excess of one thousand dollars ($1,000), except for emergencies, shall require prior approval from the Claims Processor.

p. Outpatient Diabetes Self-Care Programs: Charges, not to exceed three hundred dollars ($300.00) per fiscal year, when determined to be medically necessary by an attending physician and approved by the Executive Administrator and Claims Processor as meeting the standards of the National Diabetes Advisory Board for patients with a medical history of diabetes, provided such charges are incurred in a medically supervised facility.

q. Necessary medical services provided to terminally ill patients by duly licensed hospice organizations, when directed by the attending physician and approved in advance by the Claims Processor and the Executive Administrator.

r. Occupational Therapy: Recognized forms of occupational therapy provided by a doctor, hospital, or by a licensed professional occupational therapist to restore fine motor skills for the resumption of bodily functions.

s. Routine Diagnostic Examinations: Allowable charges for routine diagnostic examinations and tests, including Pap smears, breast, colon, rectal, and prostate exams, X rays, mammograms, blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 50 years, and once a year for covered individuals age 50 years and older, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities or to comply with governmental licensing requirements.

t. Repealed by Session Laws 1995, c. 507, s. 7.24(c), effective July 1, 1995.

(9) Limitations and Exclusions to Other Covered Charges. — No benefits are available under this section of the Plan until full utilization is made of similar benefits available under other sections of this Plan.

No benefits will be payable for:

a. Private duty nursing provided by an immediate relative or member of the covered individual's household; or private duty nursing used in lieu of or as a substitute for hospital staff nurses;

b. Dental care except as covered under subsection (8)f and other dental services covered by the surgical benefits section of this Plan, subsection (5)c of this section;

c. Foot care except in connection with services covered by the surgical or inpatient medical benefits section of this Plan, subsections (1) and (5) of this section;

d. Repealed by Session Laws 1991, c. 427, s. 29, effective January 1, 1992.

e. Expenses incurred in the event a covered individual is a bed patient in a hospital, or skilled nursing facility on the effective date of coverage, so long as the covered individual remains so confined;

f. Eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons), hearing aids, braces for teeth, dental plates or bridges or other dental prostheses, air-conditioners, vaporizers, humidifiers, mattresses (other than as supplied with a hospital bed) and specially built shoes (other than attached to artificial limbs or orthopedic braces);

g. The difference between charges made by doctors and the UCR allowance for covered benefits, and the coinsurance expenses required under this Plan;

h. Habit forming drugs to support drug dependency;

i. Any other services not specifically outlined in this Plan.

(10) Coverage for Services of Advanced Practice Registered Nurses. — Notwithstanding any other provision of this section or the Plan, benefits shall be payable for services performed by an advanced practice registered nurse subject to the following limitations:

a. The service performed is within the nurse's lawful scope of practice;

b. The Plan provides benefits for identical services performed by other licensed health care providers;

c. The service is not performed while the nurse is a regular employee in an office of a licensed physician;

d. The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care facility, or home care agency); and

e. Nothing in this subdivision is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this subdivision.

For purposes of this subdivision, an "advanced practice registered nurse" means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or a nurse midwife. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 8-14, 21.3, 21.5, 21.9; 1983 (Reg. Sess., 1984), c. 1110, s.

12; 1985, c. 192, ss. 2, 3, 6, 6.1, 11, 16-17; c. 732, ss. 1, 14, 15, 20-22, 27-29, 31-33, 35, 65, 66; 1985 (Reg. Sess., 1986), c. 1020, ss. 4, 11-15, 20, 23; 1987, c. 282, ss. 23, 24; c. 857, ss. 15-18; 1989, c. 752, s. 22(g)-(k); c. 770, s. 32; 1991, c. 427, ss. 14, 15, 21-29, 31, 37, 38, 41; 1993, c. 464, s. 6; 1995, c. 507, ss. 7.24(b), (c), 7.26, 7.27, 7.28B; c. 535, s. 28; 1996, 2nd Ex. Sess., c. 18, s. 28.24.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "licensed under applicable State laws" for "which qualifies for delivery of benefits under Title XVIII of the Social Security Act (Medicare)" in the first paragraph of subdivision (3), and added the last paragraph of subdivision (3).

ARTICLE 4.

Consolidated Judicial Retirement Act.

§ 135-65. Post-retirement increases in allowances.

(a) Commencing with the post-retirement adjustment, effective July 1, 1974, all retirement allowances payable under the provisions of this Article shall be adjusted annually in accordance with the provisions of G.S. 135-5(o).

(b) Increases in Benefits Paid to Members Retired prior to July 1, 1978. — Notwithstanding subsection (a) of this section, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in subsection (a) of this section, shall be the current maximum four percent (4%) plus an additional one percent (1%) to a total of five percent (5%) for the year 1979 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(c) Increases in Benefits Paid to Members Retired prior to July 1, 1979. — Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, shall be the current maximum four percent (4%) plus an additional six percent (6%) to a total of ten percent (10%) for the year 1980-81 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(d) Increases in Benefits Paid to Members Retired Prior to July 1, 1982. — From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by four percent (4%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (a) of this section.

(e) Increase in Benefits Paid to Members Retired on or before July 1, 1983. — From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by eight percent (8%) of the allowance payable on July 1, 1983.

(f) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984. Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(g) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985. Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985 and June 30, 1986.

(h) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986. Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(i) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987. Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(j) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988. Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(k) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. — From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(*l*) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989. Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(m) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(n) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(o) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(p) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(q) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four- tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996. (1973, c. 640, s. 1; 1979, c. 838, s. 104; 1979, 2nd Sess., c. 1137, s. 69; 1983, c. 761, s. 221; 1983 (Reg. Sess., 1984), c. 1034, s. 224; 1985, c. 479, s. 189(b); 1985 (Reg. Sess., 1986), c. 1014, s. 49(b); 1987, c. 738, s. 27(b); 1987 (Reg. Sess., 1988), c. 1086, s. 22(b); 1989, c. 752, s. 41(b); 1989 (Reg. Sess., 1990), c. 1077, ss. 8, 9; 1991 (Reg. Sess., 1992), c. 900, s. 53(c); 1993, c. 321, s. 74(f); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(n); 1995, c. 507, s. 7.22(b); 1996, 2nd Ex. Sess., c. 18, s. 28.21(b).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, added subsection (q).

ARTICLE 6.

Disability Income Plan of North Carolina.

§ 135-100. Short title and purpose.

CASE NOTES

Quoted in Willoughby v. Board of Trustees, 121 N.C. App. 444, 466 S.E.2d 285 (1996).

§ 135-103. Eligible participants.

CASE NOTES

Applied in Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995).

§ 135-104. Salary continuation.

CASE NOTES

Salary Continuation. — Because claimant had submitted an application for long-term disability and requested that he remain on the payroll until his accrued leave was exhausted, his request was sufficient exercise of his right to take salary continuation as a form of long-term disability payments, and because claimant was disabled prior to his termination, the trial court correctly ordered that claimant be compensated for the additional annual leave he would have accrued had he stayed on salary continuation through the end of his accrued annual leave. Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995).

§ 135-105. Short-term disability benefits.

CASE NOTES

Cited in Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995).

§ 135-106. Long-term disability benefits.

CASE NOTES

"Primary". — "Primary" as used in subsection (b) refers to benefits directly received by the disabled person as opposed to "secondary" benefits, which are derivative benefits that may be paid to a disabled worker's spouse, children, or family under certain circumstances. Willoughby v. Board of Trustees, 121 N.C. App. 444, 466 S.E.2d 285 (1996).

"Entitle". — "Entitle" has acquired no technical meaning, and therefore "entitle" must be given its ordinary meaning. Willoughby v. Board of Trustees, 121 N.C. App. 444, 466 S.E.2d 285 (1996).

Offset for Insurance Benefits Under Social Security. — Under § 135-106(b), the amount of the offset should be the net insurance benefits under the Social Security Administration (SSA) after deduction of attorney's fees and costs associated with obtaining the disability insurance benefits from the SSA. Willoughby v. Board of Trustees, 121 N.C. App. 444, 466 S.E.2d 285 (1996).

Entitlement to Attorney Fees. — Since former employee's attorney has a right superior as against employee to the attorney's fee and since attorney must claim her fee directly from the Social Security Administration (SSA), employee was not entitled within the meaning of § 135-106(b) to the amount statutorily reserved for the attorney's fee. Willoughby v. Board of Trustees, 121 N.C. App. 444, 466 S.E.2d 285 (1996).

Salary Continuation as a Form of Long-Term Disability. — Because claimant had submitted an application for long-term disability and requested that he remain on the payroll until his accrued leave was exhausted, his request was sufficient exercise of his right to take salary continuation as a form of long-term disability payments, and because claimant was disabled prior to his termination, the trial court correctly ordered that claimant be compensated for the additional annual leave he would have accrued had he stayed on salary continuation through the end of his accrued annual leave. Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995).

Chapter 136.

Roads and Highways.

Article 1.

Organization of Department of Transportation.

Sec.

136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.

136-16.6. Continuing rail appropriations.

Article 2.

Powers and Duties of Department and Board of Transportation.

136-18. Powers of Department of Transportation.

136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

136-20.1. To require installation and maintenance of block system and safety devices; automatic signals at railroad intersections.

136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.

136-28.1. Letting of contracts to bidders after advertisement; exceptions.

136-28.6. Private contract participation by the Department of Transportation.

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136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

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136-44.7A. Submission of secondary roads construction programs to State agencies.

Article 3A.

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136-66.1. Responsibility for streets inside municipalities.

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136-68. (See editor's note) Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

136-69. Cartways, tramways, etc., laid out; procedure.

136-70. (Effective until July 1, 1997) Alteration or abandonment of cartways, etc., in same manner.

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Ferries, etc., and Toll Bridges.

136-82. Department of Transportation to establish and maintain ferries.

136-82.2. State toll bridges.

Article 6D.

Controlled-Access Facilities.

136-89.56. Commercial enterprises.

Article 6E.

North Carolina Turnpike Authority.

136-89.78 through 136-89.158. [Reserved.]

Article 6F.

North Carolina Bridge Authority.

136-89.159. Bridge projects.

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136-89.161. North Carolina Bridge Authority.

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ARTICLE 1.

Organization of Department of Transportation.

§ 136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.

(a) The Department of Transportation shall, on or before the tenth day after the convening of each regular session of the General Assembly of North Carolina, make a full printed, detailed report to the General Assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the Department of Transportation, and such other data as may be of interest in connection with the work of the Department of Transportation. A full account of each road project shall be kept by and under the direction of the Department of Transportation or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the Governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request.

(a1) The Department of Transportation shall report quarterly beginning on October 15, 1996, and then on the fifteenth of the month following the end of the fiscal quarter, to the Joint Legislative Transportation Oversight Committee on all projects to be built with funds obligated using the cash flow provisions of G.S. 143-28.1. The report shall contain a list of the projects and the amount obligated in anticipation of revenues for each year of the project.

(b) At least 30 days before it approves a Transportation Improvement Program in accordance with G.S. 143B-350(f)(4) or approves interim changes to a Transportation Improvement Program, the

Department shall submit the proposed Transportation Improvement Program or proposed interim changes to a Transportation Improvement Program to the following members and staff of the General Assembly:

(1) The Speaker and the Speaker Pro Tempore of the House of Representatives;
(2) The Lieutenant Governor and the President Pro Tempore of the Senate;
(3) The Chairs of the House and Senate Appropriations Committees;
(4) Each member of the Joint Legislative Transportation Oversight Committee; and
(5) The Fiscal Research Division of the Legislative Services Commission. (1921, c. 2, s. 23; C.S., s. 3846(l); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1989, c. 692, s. 1.3; c. 770, s. 74.16; 1993, c. 321, s. 169.2(d); 1996, 2nd Ex. Sess., c. 18, s. 19.4(c).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.2 provides: "Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall report those additional costs to the General Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.10 provides that the Departments of Transportation and Correction shall report, quarterly beginning October 1, 1994, to the Joint Legislative Transportation Oversight Committee on the implementation of the recommendations of the Inmate Labor Subcommittee.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1996, Second Extra Session, c. 18, s. 19.4(c) was codified as subsection (a1) of this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 561, s. 68, as amended by Session Laws 1995, c. 324, s. 18.28, and Session Laws 1996, Second Extra Session, c. 18, s. 19.6, provides for an appropriation to the Department of Transportation for the replacement of the wooden trestle over the Newport River on the Beaufort and Morehead Railroad with a concrete trestle, that construction shall commence during 1996, that the completed bridge shall be owned by the Department of Transportation, that the Department of Transportation may award a contract for the project in the 1996-2002 Transportation Improvement Program on a design-build basis, and that the Department of Transportation shall file a progress report every six months beginning on December 1, 1996, with the Joint Legislative Transportation Oversight Committee on the construction of the project.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 136-13. Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors, and others.

Editor's Note. — Session Laws 1993, c. 539, s. 1308, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-14. Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position.

Editor's Note. — Session Laws 1993, c. 539, s. 1309, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-16.6. Continuing rail appropriations.

(a) There is annually credited to the Highway Fund one hundred percent (100%) of the annual dividends received by the State from its ownership of stock in the North Carolina Railroad Company for use by the Department of Transportation for railroad purposes.

(b) The Department of Transportation shall include in its annual budget the purposes for which the annual dividends received by the State from its ownership of stock in the North Carolina Railroad Company will be used.

These purposes may include the following project types to be included in the annual Transportation Improvement Program:

(1) Track and signal improvements for passenger service.
(2) Rail passenger stations and multimodal transportation centers.
(3) Grade crossing protection, elimination, and hazard removal.
(4) Rail rolling stock cars and locomotives.
(5) Rail rehabilitation.
(6) Industrial rail access.

The Department of Transportation shall use these funds to supplement but not supplant funds allocated for projects approved as part of the Transportation Improvement Program.

(c) There is annually appropriated to the Department of Transportation for railroad purposes one hundred percent (100%) of the funds credited to the Highway Fund pursuant to subsection (a) of this section. (1987, c. 738, s. 170(a), (c); 1989, c. 500, s. 53; 1991, c. 689, s. 65; 1995, c. 324, s. 18.2; 1996, 2nd Ex. Sess., c. 18, s. 19.12.)

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added the subsection (a) designation; deleted "and the Atlantic and North Carolina Railroad Company" preceding "to the Highway Fund" in subsection (a); and added subsection (b).

The 1996 Second Extra Session amendment, effective July 1, 1996, in subsection (a) substituted "credited to the Highway Fund" for "appropriated," deleted "in the prior fiscal year" preceding "by the State," and deleted "to the Highway Fund" following "North Carolina Railroad Company"; and added subsection (c).

ARTICLE 2.

Powers and Duties of Department and Board of Transportation.

§ 136-18. Powers of Department of Transportation.

The said Department of Transportation shall be vested with the following powers:

(1) The general supervision over all matters relating to the construction of the State highways, letting of contracts therefor, and the selection of materials to be used in the construction of State highways under the authority of this Chapter.

(2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are

applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

(3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Department of Transportation any of such material, at a price to be fixed by said Department of Transportation, thereafter the Department of Transportation shall have the right to condemn the necessary right-of-way under the provisions of Article 9 of Chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this Article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the Department of Transportation.

(4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Department of Transportation with other public bodies, corporations, or persons.

(5) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the Department of Transportation shall constitute a Class 1 misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the Department of Transportation may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.

(6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the Department of Transportation shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of

acquiring said roads. The Department of Transportation shall have authority to maintain all streets constructed by the Department of Transportation in towns of less than 3,000 population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Department of Transportation, whenever in the opinion of the Department of Transportation it is necessary and proper so to do.

(8) To give suitable names to State highways and change the names as determined by the Board of Transportation of any highways that shall become a part of the State system of highways.

(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except (i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii) for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Human Resources, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense.

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor.

(11) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation shall have power to close to use and abandon such grade crossing and any other crossing adjacent thereto.

(12) The Department of Transportation shall have such powers as are necessary to comply fully with the provisions of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), as amended, and all other federal aid acts and programs the Department is authorized to administer. The said Department of Transportation is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of said federal aid appropriations,

but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000).

(13) The Department of Transportation may construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(14) The Department of Transportation shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(15) The Department of Transportation shall have authority to provide facilities for the use of waterborne traffic by establishing connections between the highway system and the navigable waters of the State by means of connecting roads and piers.

(16) The Department of Transportation, pursuant to a resolution of the Board of Transportation, shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the opinion of the Department of Transportation, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Department of Transportation has agreed in writing to accept the property so acquired in exchange for that to be used by the Department of Transportation, and when, in the opinion of the Department of Transportation, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.

(18) To cooperate with appropriate agencies of the United States in acquiring rights-of-way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.

(19) To prohibit the erection of any informational, regulatory, or warning signs within the right-of-way of any highway project built within the corporate limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the Department of Transportation, unless such signs have first been approved by the Department of Transportation.

(20) The Department of Transportation is hereby authorized to maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that said road is not a part of the state-maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground shall be defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which said cemetery or burial ground is located, but shall not mean a privately owned cemetery operated for profit or family burial plots.

(21) The Department of Transportation is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the Department of Transportation shall take reasonable steps to notify the owner thereof by mail or other means.

(22) No airport or aircraft landing area shall be constructed or altered where such construction or alteration when undertaken or completed may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the Department of Transportation or its duly authorized officers. The Department of Transportation is authorized and empowered to regulate airport and aircraft landing area construction and alteration in order to preserve safe clearances between highways and airways and the Department of Transportation is authorized and empowered to make rules, regulations, and ordinances for the preservation of safe clearances between highways and airways. The Department of Transportation shall be responsible for determining safe clearances and shall fix standards for said determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or violating the provisions of the rules, regulations or ordinances promulgated under the authority of this section shall be guilty of a Class 1 misdemeanor; provided, that this subdivision shall not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority.

(23) When in the opinion of the Department of Transportation an economy in the expenditure of public funds can be

effected thereby, the Department of Transportation shall have authority to enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition and construction of roads and bridges connecting the North Carolina State highway system with public roads in adjoining states, and the Department of Transportation shall have authority to do planning, surveying, locating, engineering, right-of-way acquisition and construction on short segments of roads and bridges in adjoining states with the cost of said work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states providing for the performance of and reimbursement to the adjoining state of the cost of such work done within the State of North Carolina by the adjoining state: Provided, that the Department of Transportation shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed.

(24) The Department of Transportation is further authorized to pave driveways leading from state-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.

(25) The Department of Transportation is hereby authorized and directed to design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at state-owned hospitals for the treatment of tuberculosis, state-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and retarded centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the General Assembly. Cost for such construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the General Assembly authorizing the construction, repair, or maintenance of a paved road or drive upon any of the above-mentioned institutions, the Department of Transportation shall give such project priority to insure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization shall have been given by the General Assembly.

(26) The Department of Transportation, at the request of a representative from a board of county commissioners, is hereby authorized to acquire by condemnation new or additional right-of-way to construct, pave or otherwise improve a designated State-maintained secondary road upon presentation by said board to the Department of Transportation of a duly verified copy of the minutes of its meeting showing approval of such request by a majority of its members and by the further presentation of a petition requesting such improvement executed by the abutting owners whose frontage on said secondary road shall equal

or exceed seventy-five percent (75%) of the linear front footage along the secondary road sought to be improved. This subdivision shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain.

(27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, such costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Property owner and highway user participation can be in the form of materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges.

(28) The Department of Transportation may obtain land, either by gift, lease or purchase which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities.

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more.

(30) Consistent with G.S. 130A-309.14(a1), the Department of Transportation shall review and revise its bid procedures and specifications set forth in Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the use is practicable and cost-effective. The Department shall prepare an annual report on October 1 of each year to the Environmental Review Commission as required under G.S. 130A-309.14(a1).

(31) The Department of Transportation is authorized to designate portions of highways as scenic highways, and combinations of portions of highways as scenic byways, for portions of those highways that possess unusual, exceptional, or distinctive scenic, recreational, historical, educa-

tional, scientific, geological, natural, wildlife, cultural or ethnic features. The Department shall remove, upon application, from any existing or future scenic highway or scenic byway designation, highway sections that:

a. Have no scenic value,

b. Have been designated or would be so designated solely to preserve system continuity, and

c. Are adjacent to property on which is located one or more permanent structures devoted to a commercial or industrial activity and on which a commercial or industrial activity is actually conducted, in an unzoned area or an area zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation, except for commercial activity related to tourism or recreation.

The Department shall adopt rules and regulations setting forth the criteria and procedures for the designation of scenic highways and scenic byways under this subsection.

Those portions of highways designated as scenic by the Department prior to July 1, 1993, are considered to be designated as scenic highways and scenic byways under this subsection but the Department shall remove from this designation portions of those highway sections that meet the criteria set forth in this subsection, if requested.

(32) The Department of Transportation may perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable.

(33) The Department of Transportation is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the railroad company and require the company to repair the equipment or facilities.

(34) The Department of Transportation may conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all railroads and may investigate the cause of any railroad accident. In order to facilitate this program, any railroad involved in an accident that must be reported to the Federal Railroad Administration shall also notify the Department of Transportation of the occurrence of the accident. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289,

291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, ss. 1, 6; 1987, c. 311; c. 417, ss. 1, 2; 1989, c. 158; 1989 (Reg. Sess. 1990), c. 962, s. 1; 1993, c. 197, s. 2; c. 488, s. 1; c. 524, s. 4; c. 539, ss. 974-977; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 247, s. 1; c. 507, s. 18.2; 1995 (Reg. Sess., 1996), c. 673, s. 4; 1996, 2nd Ex. Sess., c. 18, s. 19.10(a).)

Editor's Note. —

Session Laws 1993, c. 539, ss. 974-977, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability cause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 1, provides: "The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Rail Safety Section of the Transportation Division of the North Carolina Utilities Commission, is transferred to the Department of Transportation."

Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 6, provides: "The Secretary of Transportation shall study the provision of rail safety inspection services in North Carolina by the State and the Federal Railroad Administration and shall recommend to the General Assembly no later than June 1, 1997, whether the State should continue to perform this service. The recommendation shall be contained in a report filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives."

Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 7, provides: "The Department of Transportation shall implement this act within available funds."

Effect of Amendments. — Session Laws 1995, c. 247, s. 1, effective July 1, 1995, added subdivision (32).

Session Laws 1995, c. 507, s. 18, effective July 1, 1995, in subdivision (13) substituted "may" for "is authorized and empowered to" preceding "construct and maintain", and added "and the Western Residence of the Governor in the City of Asheville".

Session Laws 1995 (Reg. Sess., 1996), c. 634, s. 4, effective July 1, 1996, added subdivisions (33) and (34).

Session Laws 1996, Second Extra Session, c. 18, s. 19.10(a), effective July 1, 1996, inserted "(i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii)" in subdivision (9).

CASE NOTES

I. General Consideration.
II. Power of Eminent Domain.

I. GENERAL CONSIDERATION.

Pedestrian Member of Protected Class. — Plaintiff, as a pedestrian lawfully and properly using a telephone booth, was a member of the Class A regulation prohibiting installation of phone booths in rights-of-way was intended to protect. Baldwin v. GTE S., Inc., 335 N.C. 544, 439 S.E.2d 108 (1994).

Violation of Administrative Regulation Is Negligence Per Se. — When the violation of an administrative regulation enacted for safety purposes is criminal (subsection (10)), that violation is negligence per se in a civil trial unless otherwise provided. Baldwin v. GTE S., Inc., 335 N.C. 544, 439 S.E.2d 108 (1994).

Cited in DOT v. Overton, 111 N.C. App. 857, 433 S.E.2d 471 (1993).

II. POWER OF EMINENT DOMAIN.

The obstruction of view of plaintiff's billboards due to the vegetation and trees planted by Department of Transporation (DOT) as part of the highway beautification project did not amount to a taking of plaintiff's property. Adams Outdoor Adv. v. North Carolina DOT, 112 N.C. App. 120, 434 S.E.2d 666 (1993).

§ 136-18.4. Provision and marking of "pull-off" areas.

Editor's Note. — Session Laws 1993, c. 539, s. 978, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings; federal parkways.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Rights Afforded by Former Version of this Section. — In enacting this section, the legislature has implicitly waived the Department of Transportation's sovereign immunity to the extent of the rights afforded in the former version of this section. Ferrell v. DOT, 334 N.C. 650, 435 S.E.2d 309 (1993).

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

(a) Whenever any road or street forming a link in or a part of the State highway system, whether under construction or heretofore or hereafter constructed, shall cross or intersect any railroad at the same level or grade, or by an underpass or overpass, and in the opinion of the Secretary of Transportation such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Department of Transportation shall issue notice requiring the person or company operating such railroad to appear before the Secretary of Transportation, at his office in Raleigh, upon a day named, which shall not be less than 10 days or more than 20 days from the date of said notice, and show cause, if any it has, why such railroad company shall not be required to alter such crossing in such way as to remove such dangerous condition and to make such changes and improvements thereat as will safeguard and secure the safety and convenience of the traveling public thereafter. Such notice shall be served on such railroad company as is now provided by law for the service of summons on domestic corporations, and officers serving such notice shall receive the same fees as now provided by law for the service of such summons.

(b) Upon the day named, the Secretary of Transportation shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If he shall determine that said crossing is, or upon the completion of such highway will be, dangerous to public safety and its elimination or safeguarding is necessary for the proper protection of the traffic on said State highway, the Secretary of Transportation shall thereupon order the construction of an adequate underpass or overpass at said crossing or he may in his discretion order said railroad company to install and maintain gates, alarm signals or other approved safety devices if and when in the opinion of said Secretary of Transportation upon the hearing as aforesaid the public safety and convenience will be secured thereby. And said order shall specify that the cost of construction of such underpass or overpass or the installation of such safety device shall be allocated between the railroad company and the Department of Transportation in the same ratio as the net benefits received by such railroad company from the project bear to the net benefits accruing to the public using the highway, and in no case shall the net benefit to any railroad company or companies be deemed to be more than ten percent (10%) of the total benefits resulting from the project. The Secretary of Transportation shall be responsible for determining the proportion of the benefits derived by the railroad company from the project, and shall fix standards for the determining of said benefits which shall be consistent with the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal-Aid Highway Act of 1944.

(c) Upon the filing and issuance of the order as hereinbefore provided for requiring the construction of any underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices at any crossing upon the State highway system, it shall be the duty of the railroad company operating the railroad with which said public road or street intersects or crosses to construct such underpass or overpass or to install and maintain such safety device as may be required in said order. The work may be done and material furnished either by the railroad company or the Department of Transportation, as may be agreed upon, and the cost thereof shall be allocated and borne as set out in subsection (b) hereof. If the work is done and material furnished by the railroad company, an itemized statement of the total amount expended therefor shall, at the completion of the work, be furnished the Department of Transportation, and the Department of Transportation shall pay such amount to the railroad company as may be shown on such statement after deducting the amount for which the railroad company is responsible; and if the work is done by the Department of Transportation, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Department of Transportation such part thereof as the railroad company may be responsible for as herein provided; such payment by the railroad company shall be under such rules and regulations and by such methods as the Department of Transportation may provide.

(d) Within 60 days after the issuance of the order for construction of an underpass or overpass or the installation of other safety devices as herein provided for, the railroad company against which such order is issued shall submit to the Department of Transportation plans for such construction or installation, and within 10 days thereafter said Department of Transportation, through its chairman of the Department of Transportation, shall notify such railroad company of its approval of said plan or of such changes and amendments thereto as to it shall seem advisable. If such plans are not submitted to the Department of Transportation by said railroad company within 60 days as aforesaid, the chairman of the Department of Transportation shall have plans prepared and submit them to the railroad company. The railroad company shall within 10 days notify the chairman of the Department of Transportation of its approval of the said plans or shall have the right within such 10 days to suggest such changes and amendments in the plans so submitted by the chairman of the Department of Transportation as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Department of Transportation shall have the same force and effect, and said railroad company shall be charged with like liability, and said underpass or overpass shall be constructed or such safety device installed in accordance therewith, as if said plans had been originally prepared and submitted by said railroad company. If said railroad company shall fail or neglect to begin or complete the construction of said underpass or overpass, or the installation of such safety device, as required by the order of the Secretary of Transportation, said Secretary of Transportation is authorized and directed to prepare the necessary plans therefor, which plans shall have the same force and effect, and shall fix said railroad company with like liability, as if said plans had been originally prepared and submitted by said railroad company, and the Department of Transportation shall proceed to construct said underpass or overpass or install such safety device in accordance therewith. An accurate account of the cost of said construction or installation shall be kept by the Department of Transportation and upon the completion of such work a statement of that portion thereof chargeable to such railroad company as set out in the order of the Department of Transportation shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Department of Transportation shall recover the amount thereof by suit therefor against said company in the Superior Court of Wake County: Provided, that the payment by such railroad company of said proportionate part may be made under such rules and regulations and by such methods as the Department of Transportation may provide. If the Department of Transportation shall undertake to do the work, it shall not obstruct or impair the operation of the railroad and shall keep the roadbed and track safe for the operation of trains at every stage of work. If said railroad company shall construct such underpass or overpass or shall install such safety devices in accordance with the order of the Secretary of Transportation, the proportionate share of the cost thereof as set out in subsection (b) hereof shall upon the completion of said work be paid to the railroad company by the Department of Transportation. The Department of Transportation may inspect and check the expenditures for such construction or installation so made by the railroad company and an accurate account of the cost thereof shall upon the completion of said work be submitted to the Department of Transportation by the railroad company. If the Department of

Transportation shall neglect or refuse to pay that portion of the cost of said construction or installation chargeable to it, the railroad company shall recover the amount thereof by suit therefor against the Department of Transportation in the Superior Court of Wake County.

(e) If any railroad company so ordered by the Secretary of Transportation to construct an underpass or overpass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Secretary of Transportation requiring such construction or installation, said railroad company shall be guilty of a Class 3 misdemeanor and shall only be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00) in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense.

(f) The jurisdiction over and control of said grade crossings and safety devices upon the State highway system herein given the Department of Transportation shall be exclusive.

(g) From any order or decision so made by the Secretary of Transportation the railroad company may appeal to the superior court of the county wherein is located the crossing affected by said order. Such appeal shall not defer or delay the construction of such underpass or overpass or the installation of such safety device as required by the order of the Secretary of Transportation, but the railroad company shall proceed to comply with such order in accordance with his terms. The action of the railroad company in complying with and carrying out such order pending said appeal shall not prejudice or affect the right or remedies of such railroad company on such appeal. Upon such appeal the court shall determine only whether the order of the Secretary of Transportation for such construction or installation is unreasonable and unnecessary for the protection of the traveling public and the apportionment of the cost to the extent hereinafter provided in this subsection, and if upon the hearing of said appeal it shall be determined that said order was unnecessary for the protection of the traveling public, the Department of Transportation shall bear the total cost of the construction of such underpass or overpass or the installation of such safety device. In the event the decision on appeal should be that the construction or installation was necessary but the cost or apportionment thereof unreasonable, then the railroad company shall bear its proportion as provided in this section of such cost as may be determined on appeal to have been reasonable to meet the necessity of the case. Upon said appeal from an order of the Secretary of Transportation, the burden of proof shall be upon the railroad company, and if it shall not be found and determined upon said appeal that said order was unreasonable or unnecessary for the protection of the traveling public at said crossing, then such railroad company shall bear its proportion of the cost of such construction or installation in accordance with this section.

(h) The Department of Transportation shall pay the cost of maintenance of all overpasses and the railroad company shall pay the cost of maintenance of all underpasses constructed in accordance with this section. The cost of maintenance of safety devices at all intersections of any railroad company and any street or road forming a link in or a part of the State highway system which have been constructed prior to July 1, 1959, or which shall be constructed thereafter shall be borne fifty percent (50%) by the railroad company and fifty percent (50%) by the Department of Transportation. The maintenance of said overpasses and underpasses shall be performed by the railroad company or the Department of Transportation as may be agreed upon and reimbursement for the cost thereof, in accordance with this section, shall be made annually. The maintenance of such safety devices shall be performed by the railroad company and reimbursement for the cost thereof, in accordance with this section, shall be made annually by the Department of Transportation. (1921, c. 2, s. 19; 1923, c. 160, s. 5; C.S., s. 3846(y); 1925, c. 277; 1929, c. 74; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1959, c. 1216; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 11, 15; 1993, c. 539, s. 979; 1994, Ex. Sess., c. 14, s. 60; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 979, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 60, which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date.

§ 136-20.1. To require installation and maintenance of block system and safety devices; automatic signals at railroad intersections.

(a) The Department of Transportation is empowered and directed to require any railroad company to install and put in operation and maintain upon the whole or any part of its road a block system of telegraphy or any other reasonable safety device, but no railroad company shall be required to install a block system upon any part of its road unless at least eight trains each way per day are operated on that part.

(b) The Department of Transportation is empowered and directed to require, when public safety demands, where two or more railroads cross each other at a common grade, or any railroad crosses any stream or harbor by means of a bridge, to install and maintain such a system of interlocking or automatic signals as will render it safe for engines and trains to pass over such crossings or bridge without stopping, and to apportion the cost of installation and maintenance between said railroads as may be just and proper. (1907, c. 469, s. 1b; 1911, c. 197, s. 2; Ex. Sess. 1913, c. 63, s. 1; C.S., ss. 1047, 1049; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1995 (Reg. Sess., 1996), c. 673, s. 5.)

Editor's Note. — This section was formerly numbered 62-236. It was recodified as § 136-20.1 by Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 5.

Session Laws 1995 (Reg. Sess., 1996), c. 673, s. 6, provides: "The Secretary of Transportation shall study the provision of rail safety inspection services in North

Carolina by the State and the Federal Railroad Administration and shall recommend to the General Assembly no later than June 1, 1997, whether the State should continue to perform this service. The recommendation shall be contained in a report filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives."

Session Laws 1995, (Reg. Sess., 1996), c. 673, s. 7, provides: "The Department of Transportation shall implement this act within available funds."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, recodified former G.S. 62-236 as this section; and substituted "Department of Transportation" for "Commission" in subsections (a) and (b).

§ 136-26. Closing of State highways during construction; injury to barriers, warning signs, etc.

Editor's Note. — Session Laws 1993, c. 539, s. 980, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.

The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State highway right-of-way, that are necessary to be relocated for a State highway improvement project and that are owned by: (i) a municipality with a population of 5,500 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural water system operated by county as an enterprise system; (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes; or (vi) constructed by a water or sewer system organized pursuant to Chapter 162A of the General Statutes and then sold or transferred to a municipality with a population of greater than 5,500 according to the latest decennial census. (1983 (Reg. Sess., 1984), c. 1090; 1985, c. 479, s. 186(a); 1985 (Reg. Sess., 1986), c. 1018, s. 11; 1993 (Reg. Sess., 1994), c. 736, s. 1; 1995, c. 33, s. 1; c. 266, s. 1.1.)

Editor's Note. —
Session Laws 1993, c. 561, s. 64 of which is noted under this section, in s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Effect of Amendments. — Session Laws 1995, c. 33, s. 1, effective April 13, 1995, added "or (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes" to the end of the section.

Session Laws 1995, c. 266, s. 1, effective June 15, 1995, and not affecting pending litigation, added the language beginning "or (vi) constructed by a water or sewer system" to the end of the section, and made a related stylistic change.

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Qualification for Exemption. — On the date the Department of Transportation lets a contract for a highway improvement project, a water or sewer system organized pursuant to Chapter 162A must be in existence to qualify for an exemption from the requirement that water and sewer lines on state highway right of way be relocated at local expense. See opinion of Attorney General to Mr. William S. Richardson, — N.C.A.G. — (June 21, 1994).

The existence of a right of way encroachment agreement did not affect the application of the exemption as the specific exemption contained in this section supersedes any conflicting provision of the agreement and would not be enforceable. See opinion of Attorney General to Mr. William S. Richardson, — N.C.A.G. — (June 21, 1994).

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over five hundred thousand dollars ($500,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal-aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.131(a) for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. The Department of Transportation shall use only the contract provisions provided in the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, January 1, 1984, except as each may be changed or provided for by rule adopted by the Board of Transportation in accordance with the Administrative Procedure Act.

(b) In those cases in which the amount of work to be let to contract for highway construction, maintenance, or repair is five hundred thousand dollars ($500,000) or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Article 1 of Chapter 143, "The Executive Budget Act." In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Article 1 of Chapter 143 of the General Statutes, "The Executive Budget Act."

(e) The Department of Transportation may enter into contracts for construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the State Highway Administrator that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements.

(f) The Department of Transportation is required to solicit proposals under rules and regulations published by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction, maintenance, or repair that are over ten thousand dollars ($10,000). The right to reject any and all proposals is reserved to the Board of Transportation, but the Board of Transportation may consult with the Advisory Budget Commission before awarding any such contract.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16; 1979, c. 174; 1981, c. 200, ss. 1, 2; c. 859, s. 68; 1985, c. 122, s. 2; 1985 (Reg. Sess., 1986), c. 955, s. 46; c. 1018, s. 2; 1987, c. 400; 1989, c. 78; c. 749, ss. 2, 3; 1995, c. 167, s. 1.)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 18.14, provides: "The Department of Transportation may enter into a design-build-warrant contract to develop, with Federal Highway Administration participation under The 1991 Intermodal Surface Transportation Efficiency Act, Title VI, Part B, Sections 6051-6059, a 'Congestion Avoidance and Reduction for Autos and Trucks (CAR-AT)' system of traffic management for the greater Charlotte-Mecklenburg urban areas. Notwithstanding any other provision of law, contractors, contractors' employees, and Department of Transportation employees involved in this project only do not have to be licensed by occupational licensing boards as 'license' and 'occupational licensing board' are defined in G.S. 93B-1; and for the purpose of entering into contracts, the Department of Transportation is exempted from the provisions of the following General Statutes: G.S. 136-28.1, 143-52, 143-53, 143-58, 143-128, and 143-129. These statutory exemptions are limited and available only to the extent necessary to comply with federal rules, regulations, and policies for completion of this project.

"The Department of Transportation shall report quarterly to the Joint Legislative Transportation Oversight Committee on its efforts to enter into a design-build-warrant contract and to award and construct the project. The report shall include, but not be limited to, the number of types of firms bidding on the project, special qualifications of the firms bidding, and the effect statutory exemptions might have had on the award and construction of the project and the receipt of federal discretionary funding for the project."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective June 5, 1995, substituted "five hundred thousand dollars ($500,000)" for "three hundred thousand dollars ($300,000)" in the first sentences of subsections (a) and (b); and inserted "maintenance" following "construction" in subsections (b), (c), (d), (e) and (f).

§ 136-28.6. Private contract participation by the Department of Transportation.

(a) The Department of Transportation may participate in private engineering and construction contracts for State highways.

(b) In order to qualify for State participation, the project must be:

(1) The construction of a street or highway on the Transportation Improvement Plan adopted by the Department of Transportation; or

(2) The construction of a street or highway on a mutually adopted thoroughfare plan that is designated a Department of Transportation responsibility.

(c) Only those projects in which the developer furnishes the right-of-way without cost to the Department of Transportation are eligible.

(d) The Department's participation shall be limited to fifty percent (50%) of the amount of any engineering contract and/or any construction contract let by the developer for the project.

(e) Participation in the contracts shall be limited to cost associated with normal practices of the Department of Transportation.

(f) Plans for the project must meet Department of Transportation standards and shall be approved by the Department of Transportation.

(g) Projects shall be constructed in accordance with the plans and specifications approved by the Department of Transportation.

(h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between a private developer and the Department of Transportation for participation in private engineering and construction contracts under this section.

(i) Municipalities may participate financially in private engineering and construction contracts for projects pertaining to streets or highways which are on a mutually adopted thoroughfare plan for said municipality. (1987, c. 860, ss. 1, 2; 1989, c. 749, s. 1; 1991, c. 272, s. 1; 1993, c. 183, s. 1; 1995, c. 358, s. 5; c. 437, s. 3; c. 447, ss. 1, 2.)

Editor's Note. — Session Laws 1995, c. 447, s. 1, deleted the provision in Session Laws 1987, c. 860, s. 2, as amended, providing for expiration of this section.

Session Laws 1987, c. 860, s. 2, as amended by Session Laws 1989, c. 749, s. 1, by Session Laws 1991, c. 272, s. 1, by Session Laws 1993, c. 183, s. 1, by Session Laws 1995, c. 358, s. 5, and by

Session Laws 1995, c. 437, s. 3, made this section effective upon ratification (August 14, 1987), and provided that it would expire July 21, 1995.

Effect of Amendments. — The 1995 amendment, effective June 18, 1995, added subsection (i).

§ 136-28.8. Use of recycled materials in construction.

(a) It is the intent of the General Assembly that the Department of Transportation continue to expand its use of recycled materials in its construction programs.

(b) The General Assembly declares it to be in the public interest to find alternative ways to use certain recycled materials that currently are part of the solid waste stream and that contribute to problems of declining space in landfills. To the extent economically practicable, the Department shall use:

(1) Rubber from tires in road pavements, subbase materials, or other appropriate applications; and

(2) Recycled materials for guard rail posts, right-of-way fence posts, and sign supports

so long as these materials meet all appropriate engineering standards.

(c) As a part of its scheduled projects, the Department shall conduct additional research, which may include demonstration projects, on the use of recycled materials in construction.

(d) The Department shall review and revise existing bid procedures and specifications to eliminate any procedures and specifications that explicitly discriminate against recycled materials in construction, except where the procedures and specifications are necessary to protect the health, safety, and welfare of the people of this State.

(e) The Department shall review and revise its bid procedures and specifications on a continuing basis to encourage the use of recycled materials in construction and shall, to the extent economically practicable, require the use of recycled materials.

(f) All agencies shall cooperate with the Department in carrying out the provisions of this section.

(g) On or before 1 October of each year, the Department shall report to the Division of Pollution Prevention and Environmental Assistance of the Department of Environment, Health, and Natural Resources as to the amounts and types of recycled materials that were specified or used in contracts that were entered into during the previous fiscal year. On or before 1 December of each year, the Division of Pollution Prevention and Environmental Assistance shall prepare a summary of this report and submit the summary to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission.

(h) The Department, in consultation with the Department of Environment, Health, and Natural Resources, shall determine minimum content standards for recycled materials.

(i) This section is broadly applicable to all procurements by the Department if the quality of the product is consistent with the requirements of the bid specifications.

(j) The Department may adopt rules to implement this section. (1989, c. 784, s. 6; 1993, c. 256, s. 3; 1995 (Reg. Sess., 1996), c. 743, s. 9.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, rewrote subsection (g).

§ 136-28.10. Highway Fund and Highway Trust Fund Small Project Bidding.

Editor's Note. — Session Laws 1993, c. 561, s. 65, effective July 1, 1993, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 136-32. Other than official signs prohibited.

Editor's Note. — Session Laws 1993, c. 539, s. 981, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-32.1. Misleading signs prohibited.

Editor's Note. — Session Laws 1993, c. 539, s. 982, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-32.2. Placing blinding, deceptive or distracting lights unlawful.

Editor's Note. — Session Laws 1993, c. 539, s. 983, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-33. Damaging or removing signs; rewards.

Editor's Note. — Session Laws 1993, c. 539, s. 984, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

(a) There is annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one and three-fourths cents (1¾¢) tax on each gallon of motor fuel taxed under Article 36C of Chapter 105 of the General Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter. The amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the Highway Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

Seventy-five percent (75%) of the funds appropriated for cities and towns shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the State highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds under this section and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 of each year. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount appropriated for distribution under this section for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under this section submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis.

(b) For purposes of this section and of G.S. 136-41.2 and 136-41.3, urban service districts defined by the governing board of a consolidated city-county in which street services are provided by the consolidated city-county, as defined by G.S. 160B-2(1), shall be considered eligible municipalities, and the allocations to be made thereby shall be made to the government of the consolidated city-county.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section and of G.S. 136-41.2, the unincorporated area known as Butner qualifies in all respects for allocation of funds under this section and certification of the population and street mileage of Butner by the North Carolina Department of Human Resources is acceptable. Funds allocated to the area for this purpose shall be administered by the member of the State Board of Transportation administering the Highway Fund in Granville County. (1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2; 1969, c. 665, ss. 1, 2; 1971, c. 182, ss. 1-3; 1973, c. 476, s. 193; c. 500, s. 1; c. 507, s. 5; c. 537, s. 6; 1975, c. 513; 1977, c. 464, s. 7.1; 1979, 2nd Sess., c. 1137, s. 50; 1981, c. 690, s. 4; c. 859, s. 9.2; c. 1127, s. 54; 1985 (Reg. Sess., 1986), c. 982, s. 1; 1989, c. 692, s. 1.6; 1995, c. 390, s. 26; c. 461, s. 18.)

Editor's Note. — Session Laws 1995, c. 461, s. 20, contains a severability clause.

Effect of Amendments. — Session Laws 1995, c. 390, s. 26, effective January 1, 1996, in subsection (a) divided the former first sentence into the present first and second sentences, in the present first sentence substituted "taxed under Article 36C of Chapter 105 of the General Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter" for "as taxed by G.S. 105-434 and 105-435, to", and added "The amount appropriated shall" in the present second sentence.

Session Laws 1995, c. 461, s. 18, effective July 19, 1995, added "as defined by G.S. 160B-2(1)" in subsection (b).

§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

The funds allocated to cities and towns under the provisions of G.S. 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways located within the rights-of-way of public streets and highways, or for the planning, construction, and maintenance of sidewalks along public streets and highways.

Each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of G.S. 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall file a statement under oath with the Secretary of Transportation showing in detail the expenditure of funds received by virtue of G.S. 136-41.1 and 136-41.2 during the preceding year and the balance on hand.

No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be permitted to accumulate for a period greater than permitted by this section. Interest on accumulated funds shall be used only for the purposes permitted by the provisions of G.S. 136-41.3. Any municipality having accumulated an amount greater than the sum of the past 10 allocations made, shall have an amount equal to such excess deducted from the next allocation after receipt of the report required by this section. Such deductions shall be carried over and added to the amount to be allocated to municipalities for the following year.

In the discretion of the local governing body of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 it may contract with the Department of Transportation to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The Department of Transportation within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the Department of Transportation in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system.

In the case of each eligible municipality, as defined in G.S. 136-41.2, having a population of less than 5,000, the Department of Transportation shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on nonsystem streets as the municipality may request within the limits of the current or accrued payments made to the municipality under the provisions of G.S. 136-41.1.

In computing the costs, the Department of Transportation may use the same rates for equipment, rental, labor, materials, supervision, engineering and other items, which the Department of Transportation uses in making charges to one of its own department or against its own department, or the Department of Transportation may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights-of-way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Department of Transportation free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Department of Transportation, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the Department of Transportation and if it desires to dissolve the contract at the end of any two-year period it shall notify the Department of Transportation of its desire to terminate said contract on or before April 1 of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Department of Transportation for the fiscal year ending June 30, by August 1 following the fiscal year, then the Department of Transportation shall apply the said municipality's allocation under G.S. 136-41.1 to this account until said account is paid and the Department of Transportation shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipality with the Department of Transportation in accordance with the provisions of the three preceding paragraphs.

The Department of Transportation is authorized to apply a municipality's share of funds allocated to a municipality under the provisions of G.S. 136-41.1 to any of the following accounts of the municipality with the said Department of Transportation, which the municipality fails to pay:

(1) Cost sharing agreements for right-of-way entered into pursuant to G.S. 136-66.3, but not to exceed ten percent (10%) of any one year's allocation until the debt is repaid,

(2) The cost of relocating municipally owned waterlines and other municipally owned utilities on a State highway project which is the responsibility of the municipality,

(3) For any other work performed for the municipality by the Department of Transportation or its contractor by agreement between the Department of Transportation and the municipality, and

(4) For any other work performed that was made necessary by the construction, reconstruction or paving of a highway on the State highway system for which the municipality is

legally responsible. (1951, c. 260, s. 3; c. 948, s. 4; 1953, c. 1044; 1957, c. 65, s. 11; 1969, c. 665, ss. 3, 4; 1971, c. 182, s. 4; 1973, c. 193; c. 507, s. 5; 1977, c. 464, ss. 7.1, 20; c. 808; 1993 (Reg. Sess., 1994), c. 690, s. 1.1.)

ARTICLE 2A.

State Roads Generally.

§ 136-44.2A. Secondary road construction.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.4 provides: "Five hundred thousand dollars ($500,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1994-95 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State-maintained county roads in the 17 counties where signing has not already been funded."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

§ 136-44.5. Secondary roads; mileage study; allocation of funds.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.4 provides: "Five hundred thousand dollars ($500,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1994-95 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State-maintained county roads in the 17 counties where signing has not already been funded."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 324, s. 18.12, as amended by Session Laws 1995, c. 507, s. 18.5, provides: "Of the funds appropriated in this act to the Department of Transportation:

"(1) Fourteen million dollars ($14,000,000) shall be allocated in each fiscal year for small urban construction projects. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for the small urban construction program for small urban construction projects that are located within the area covered by a one-mile radius of the municipal corporate limits.

"(2) Nine million dollars ($9,000,000) shall be used statewide for rural or small urban highway improvements, industrial access roads, and spot-safety projects as approved by the Secretary of the Department of Transportation."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the

Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

§ 136-44.7A. Submission of secondary roads construction programs to State agencies.

When the Department of Transportation proposes to pave an unpaved secondary road that crosses land controlled by a State agency, the Department of Transportation shall obtain the approval of that State agency before paving that secondary road. (1996, 2nd Ex. Sess., c. 18, s. 19.7.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.6, made this section effective July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

ARTICLE 3.

State Highway System.

Part 1. Highway System.

§ 136-45. General purpose of law; control, repair and maintenance of highways.

CASE NOTES

Liability for Defects in Highway. — Where the portions of roads in question were part of the state highway system, and as such, the responsibility of the N.C. Department of Transportation (NCDOT), apart from its contract with the NCDOT, city had no responsibility for the maintenance or condition of the traffic signal in question. Colombo v. Dorrity, 115 N.C. App. 81, 443 S.E.2d 752, cert. denied, 337 N.C. 689, 448 S.E.2d 517 (1994).

ARTICLE 3A.

Streets and Highways in and around Municipalities.

§ 136-66.1. Responsibility for streets inside municipalities.

Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

(1) The State Highway System. — The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points

beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The Department of Transportation shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a statewide coordinated system of primary and secondary streets and highways.

(2) The Municipal Street System. — In each municipality the municipal street system shall consist of those streets and highways accepted by the municipality which are not a part of the State highway system. The municipality shall be responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for this system.

(3) Maintenance of State Highway System by Municipalities. — Any city or town, by written contract with the Department of Transportation, may undertake to maintain, repair, improve, construct, reconstruct or widen those streets within municipal limits which form a part of the State highway system, and may also, by written contract with the Department of Transportation, undertake to install, repair and maintain highway signs and markings, electric traffic signals and other traffic-control devices on such streets. All work to be performed by the city or town under such contract or contracts shall be in accordance with Department of Transportation standards, and the consideration to be paid by the Department of Transportation to the city or town for such work, whether in money or in services, shall be adequate to reimburse the city or town for all costs and expenses, direct or indirect, incurred by it in the performance of such work.

(4) If the governing body of any municipality determines that it is in the best interest of its citizens to do so, it may expend its funds for the purpose of making any of the following improvements on streets that are within its corporate limits and form a part of the State highway system:

a. Construction of curbing and guttering.

b. Adding of lanes for automobile parking.

c. Constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system.

d. Constructing sidewalks.

e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision shall be financed entirely by the municipality and be approved by the Department of Transportation.

The cost of any work financed by a municipality under this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality. (1959, c. 687, s. 1; 1969, cc. 798, 978; 1973, c. 507, s. 5; 1975, c. 664, s. 3; 1977, c. 464, s. 7.1; 1987, c. 747, s. 2; 1993 (Reg. Sess., 1994), c. 690, s. 1; 1995, c. 163, s. 14.)

Effect of Amendments. — The 1995 amendment, effective June 5, 1995, in subdivision (4), in the introductory language, substituted "determines" for "shall determine", inserted "any of" following "making", inserted "that are" following "streets", and substituted "and" for "which"; in the last paragraph in subdivision (4)e. substituted "under" for "pursuant to"; and made stylistic changes.

CASE NOTES

City Had No Responsibility for Maintenance or Condition of Traffic Signal. — Where the portions of roads in question were part of the state highway system, and as such, the responsibility of the N.C. Department of Transportation (NCDOT), apart from its contract with the NCDOT, city had no responsibility for the maintenance or condition of the traffic signal in question. Colombo v. Dorrity, 115 N.C. App. 81, 443 S.E.2d 752, cert. denied, 337 N.C. 689, 448 S.E.2d 517 (1994).

§ 136-66.2. Development of a coordinated street system.

Local Modification. — Session Laws 1995, c. 34, s. 4, repealed Session Laws 1965, c. 987, which was shown as a local modification under this section in the main volume.

ARTICLE 3B.

Dedication of Right-of-Way with Density or Development Rights Transfer.

§ 136-66.10. Dedication of right-of-way under local ordinances.

CASE NOTES

Quoted in Dellinger v. City of Charlotte, 114 N.C. App. 146, 441 S.E.2d 626 (1994).

ARTICLE 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-68. (See editor's note) Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situated. Such special proceeding shall be commenced by a petition filed with said clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the superior court for a jury trial de novo on all issues including the right to relief, the location of a cartway, tramway or railway, and the assessment of damages. The procedure established under Chapter 40A, entitled "Eminent Domain," shall be followed in the conduct of such special proceeding insofar as the same is applicable and in harmony with the provisions of this section. (1879, c. 82, s. 9; Code, s. 2023; Rev., s. 2683; C.S., s. 3835; 1931, c. 448; 1995, c. 513, s. 1.)

Editor's Note. — Session Laws 1995, c. 513, s. 4 provides: "This act is effective upon ratification but sections 2 and 3 expire on July 1, 1997. This act applies to actions to establish cartways filed on or after the effective date, but before July 1, 1997." For the amendment by s. 1, see the Effect of Amendments note.

Effect of Amendments. — The 1995 amendment by Session Laws 1995, c. 513, s. 1, effective July 29, 1995, and applicable to actions to establish cartways filed on or after that date, but before July 1, 1997, divided the former last sentence into the present last and next to last sentences, substituted "a jury trial de novo on all issues including the right to relief, the location of a cartway, tramway or railway, and the assessment of damages" for "trial de novo and" in the present next to last sentence, and substituted "Chapter 40A" for "Chapter 40" in the last sentence. See editor's note.

§ 136-69. Cartways, tramways, etc., laid out; procedure.

(a) **(Effective until July 1, 1997)** In order to ensure that all landowners who do not have a deeded or documented easement or right-of-way to a public road shall have a legal means of obtaining access to that road, if any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or the use of land as a single-family homestead, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road, reasonable deeded or documented easement or right-of-way to a public road, or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of

§ 136-69(a), (c) are set out twice. See notes.

ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in G.S. 136-68. Should it be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not more than 18 feet of travel surface or such other minimum width requested in the petition and found necessary and proper by the court, and not more than 30 feet in width for cuts, fills, and ditches or cableways, chutes, and flumes. If a cartway is granted for the use of one or more single-family homesteads, each single-family homestead must consist of at least seven acres of land. Where there exists a private railroad crossing, that private railroad crossing may be used as part of a cartway established under this Article provided the person, firm, association or corporation seeking the cartway agrees to share proportionately with other landowners authorized to use the crossing the cost of maintaining the private crossing and to protect and hold harmless the railroad against all liability associated with the crossing, provided the railroad is being operated in a lawful manner at or in the vicinity of the crossing. Except as herein provided for the establishment of a cartway over an existing private railroad crossing, no real estate, right-of-way, easement, leasehold, or other interest in land which has been condemned by a railroad, or has been obtained for a railroad's use as a right-of-way, depot, or station house shall be used for the establishment of a cartway or other use under this Article except by agreement with the railroad. Should a petitioner seeking a cartway request a new railroad crossing, the railroad shall negotiate in good faith the location of the new crossing at the requested location or some other mutually agreeable location. The jury of view shall assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

(a) **(Effective July 1, 1997)** If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section (G.S. 136-68), and if it shall be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a

§ 136-69(a), (c) are set out twice. See notes.

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jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than 18 feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

(b) **(See editor's note)** Compensation to the landowner for the establishment of a cartway over the property of another shall be as provided in Chapter 40A Article 4 of the North Carolina General Statutes.

(c) **(Effective until July 1, 1997)** Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. A permissive use of a right-of-way or easement across the land of another shall not be a bar to the establishment of a cartway under this Article. In determining the path of a cartway, tramway or railway the jury of view shall give priority to the location of previously used easements or cartways.

(c) **(Effective July 1, 1997)** Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (1798, c. 508, s. 1, P.R.; 1822, c. 1139, s. 1, P.R.; R.C., c. 101, s. 37; 1879, c. 258; Code, s. 2056; 1887, c. 46; 1903,

c. 102; Rev., s. 2686; 1909, c. 364, s. 1; 1917, c. 187, s. 1; c. 282, s. 1; C.S., s. 3836; 1921, c. 135; Ex. Sess., 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c. 1125, s. 1; 1961, c. 71; 1965, c. 414, s. 1; 1981, c. 826, s. 1; 1995, c. 513, s. 2.)

Subsections (a) and (c) set out twice. — The first versions of subsections (a) and (c) set out above are effective until July 1, 1997. The second versions of subsections (a) and (c) set out above are effective July 1, 1997.

Editor's Note. — Session Laws 1995, c. 513, s. 4 provides: "This act is effective upon ratification but sections 2 and 3 expire on July 1, 1997. This act applies to actions to establish cartways filed on or after the effective date, but before July 1, 1997." For the amendment by s. 1, see the Effect of Amendment note.

Session Laws 1995, c. 513, s. 3a, was codified as subsection (b) of this section at the direction of the Revisor of Statutes. The subsection (a) and (c) designations were assigned by the Revisor of Statutes.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, and applicable to actions to establish cartways filed on or after that date, but before July 1, 1997, divided the former first sentence into the present first, second and seventh sentences; in the first sentence added "In order to ensure that all landowners who do not have a deeded or documented easement or right-of-way to a public road shall have a legal means of obtaining access to that road", "or the use of land as a single-family homestead", and "reasonable deeded or documented easement or right-of-way to a public road", and substituted "G.S. 136-68" for "the preceding section (G.S. 136-68)"; in the present second sentence substituted "Should it" for "and if it shall", and "more than 18 feet of travel surface or such other minimum width requested in the petition and found necessary and proper by the court, and not more than 30 feet in width for cuts, fills, and ditches or cable ways, chutes, and flumes" for "less than 18 feet in width, or cableways, chutes, and flumes, and"; added the third through sixth sentences; in the seventh sentence added "the jury of view shall"; and added the last two sentences of the last paragraph. For the expiration of this amendment, see the editor's note.

§ 136-70. (Effective until July 1, 1997) Alteration or abandonment of cartways, etc., in same manner.

Cartways or other ways established under this Article or heretofore established, may be altered, changed, or abandoned in like manner as herein provided for their establishment upon petition instituted by any interested party. A cartway established under this Article shall not terminate until the time specified in the petition and as found necessary and proper by the court. (1798, c. 508, ss. 1, 2, 3, P.R.; 1834, c. 16, s. 1; R.C., c. 101, s. 38; Code, s. 2057; 1887, c. 46, s. 2; c. 266; Rev., s. 2694; C.S., s. 3837; 1931, c. 448; 1995, c. 513, s. 3.)

For this section as in effect July 1, 1997, see the main pamphlet.

Editor's Note. — Session Laws 1995, c. 513, s. 4, provides that the amendment to this section by s. 3 of c. 513 expires July 1, 1997.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, and applicable to actions to establish cartways filed on or after that date, but before July 1, 1997, deleted the proviso in the first sentence regarding the termination of ways established for the removal of timber at the end of five years, and added the last sentence.

ARTICLE 5.

Bridges.

§ 136-72. Load limits for bridges; penalty for violations.

Editor's Note. — Session Laws 1993, c. 539, s. 985, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-80. Fastening vessels to bridges misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 986, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6.

Ferries, etc., and Toll Bridges.

§ 136-82. Department of Transportation to establish and maintain ferries.

The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Department of Transportation, be expedient.

To accomplish the purpose of this section said Department of Transportation is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Department of Transportation represent the fair value of the public service rendered.

The Department of Transportation, notwithstanding any other provision of law, may operate, or contract for the operation of, concessions on the ferries and at ferry facilities to provide to passengers on the ferries food, drink, and other refreshments, personal comfort items, and souvenirs publicizing the ferry system. (1927, c. 223; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1989, c. 752, s. 101; 1995, c. 211, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in the third paragraph, at the beginning deleted "To provide for the comfort and convenience of the passengers on the ferries established and maintained pursuant to this section", inserted "to passengers on the ferries" preceding "food, drink", at the end substituted "and souvenirs publicizing the ferry system" for "for those passengers", and made related changes.

§ 136-82.2. State toll bridges.

(a) Toll. — The Department of Transportation may charge a toll for the use of a bridge that is included in the Highway Trust Fund Intrastate System Projects, which are listed in G.S. 136-179, and is at least three and one-half miles in length. The toll may not exceed ten dollars ($10.00) for a round trip or five hundred dollars ($500.00) for an annual pass for a vehicle. The Department may set different rates of fees for passenger motor vehicles and for property-carrying vehicles. The Department may employ personnel to collect the toll and may construct and operate a toll plaza for collection of the toll. Toll revenue that exceeds the cost of collecting the toll shall be credited to the Highway Trust Fund.

(b) Report. — The Department of Transportation shall report annually to the Joint Legislative Transportation Oversight Committee on a toll imposed under this section. The report shall state the amount of toll revenue collected, the number of users paying the toll, the cost of collecting the toll, and any other information requested by the Committee. (1993 (Reg. Sess., 1994), c. 765, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 765, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

§ 136-89. Safety measures; guard chains or gates.

Editor's Note. — Session Laws 1993, c. 539, s. 987, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.56. Commercial enterprises.

No commercial enterprises or activities shall be authorized or conducted by the Department of Transportation, or the governing body of any city or town, within or on the property acquired for or designated as a controlled-access facility, as defined in this Article, except for:

(1) Materials displayed at welcome centers which shall be directly related to travel, accommodations, tourist-related activities, tourist-related services, and attractions. The Department of Transportation shall issue rules regulating the display of these materials. These materials may contain advertisements for real estate; and

(2) Vending machines permitted by the Department of Transportation and placed by the Division of Services for the

Blind, Department of Human Resources, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. In order to permit the establishment of adequate fuel and other service facilities by private owners or their lessees for the users of a controlled-access facility, the Department of Transportation shall permit access to service or frontage roads within the publicly owned right-of-way of any controlled-access facility established or designated as provided in this Article, at points which, in the opinion of the Department of Transportation, will best serve the public interest. The location of such fuel and other service facilities may be indicated to the users of the controlled-access facilities by appropriate signs, the size, style, and specifications of which shall be determined by the Department of Transportation.

The location of fuel and other service facilities may be indicated to the users of the controlled access facilities by appropriate logos placed on signs owned, controlled, and erected by the Department of Transportation. The owners, operators or lessees of fuel and other service facilities who wish to place a logo identifying their business or service on a sign shall furnish a logo meeting the size, style and specifications determined by the Department of Transportation and shall pay the Department for the costs of initial installation and subsequent maintenance. The fees for logo sign installation and maintenance shall be set by the Board of Transportation based on cost. (1957, c. 993, s. 9; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1981, c. 481, s. 1; 1983, c. 604, s. 1; 1985, c. 456; c. 718, ss. 2, 3, 6; 1987, c. 417, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 19.10(b).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, deleted "vending" at the end of the introductory language; added subdivision (1); and added the subdivision (2) designation and added "Vending" at the beginning of subdivision (2).

§ 136-89.58. Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.

Editor's Note. — Session Laws 1993, c. 539, s. 988, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6E.

North Carolina Turnpike Authority.

§§ 136-89.78 through 136-89.158: Reserved for future codification purposes.

ARTICLE 6F.

North Carolina Bridge Authority.

§ 136-89.159. Bridge projects.

(a) The creation of the North Carolina Bridge Authority is necessitated by:

(1) The high cost of constructing long bridges;

(2) The need for providing better access to areas of a peninsula of the mainland where egress has been blocked by federal acquisition of property; and

(3) The need for providing additional critically needed evacuation routes from the Outer Banks during hurricanes and in the event of other natural disasters.

(b) The North Carolina Bridge Authority shall construct, maintain, repair, and operate a bridge of more than two miles in length going from the mainland to a peninsula from which land egress is through property of the United States. (1995, c. 485, s. 1.)

Editor's Note. — Session Laws 1995, c. 485, s. 3, made this Article effective upon ratification. The Act was ratified July 26, 1995.

Session Laws 1995, c. 485, s. 2 provides: "The Joint Legislative Transportation Oversight Committee shall study the best method for funding the North Carolina Bridge Authority and the construction and maintenance of a bridge in Currituck County from the mainland to the Outer Banks near Corolla, and report its findings to the General Assembly on or before the first day of the 1996 Regular Session."

§ 136-89.160. Funding for projects.

All expenses incurred in carrying out the provisions of this Article shall be payable solely from funds, including federal funds, that are now or may become available to the Authority in the future for projects. Any fees collected under this Article shall be credited to the Highway Trust Fund and used to offset the costs of building, maintaining, or operating the bridge and other related projects. (1995, c. 485, s. 1.)

§ 136-89.161. North Carolina Bridge Authority.

(a) There is created a body politic and corporate to be known as the "North Carolina Bridge Authority". The Authority is constituted a public agency, and the exercise by the Authority of the powers conferred by this Article in the construction, operation, and maintenance of the bridge project shall be deemed and held to be the performance of an essential governmental function.

(b) The North Carolina Bridge Authority shall consist of eight members:

(1) The Secretary of Transportation.

(2) Three members shall be appointed by the Governor, one for a term expiring on July 1, 1996, one for a term expiring on July 1, 1997, and one for a term expiring on July 1, 1998. Each subsequent appointment shall be for a term of four years.

(3) Four members shall be appointed by the General Assembly, two upon the recommendation of the President Pro Tempore of the Senate and two upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121.

   a. The President Pro Tempore of the Senate shall recommend the appointment of two members, one of whom shall serve a term expiring June 30, 1997, and one of whom shall serve a term expiring June 30, 1999. Each subsequent regular appointment shall be for a term of four years.

   b. The Speaker of the House shall recommend the appointment of two members, one of whom shall serve a term expiring June 30, 1997, and one of whom shall serve a term expiring June 30, 1999. Each subsequent regular appointment shall be for a term of four years.

(c) The successor of each of the appointed members shall be appointed for a term of four years, but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term, and a member of the Authority shall be eligible for reappointment. Each appointed member of the Authority may be removed by the appointing authority for misfeasance, malfeasance, or willful neglect of duty. Each appointed member of the Authority before entering upon the member's duties shall take an oath to administer the duties of the office faithfully and impartially, and a record of each oath shall be filed in the Office of the Secretary of State.

(d) At its first meeting after July 1, 1995, and every two years thereafter, the Authority shall elect from its appointed membership a chair and a vice-chair. The Authority shall also elect a secretary who need not be a member of the Authority. The secretary shall serve as an officer at the pleasure of the Authority. Five members of the Authority shall constitute a quorum, and the affirmative vote of five members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

(e) The appointed members of the Authority shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

(f) The Authority shall be located within the Department of Transportation for administrative purposes but shall exercise all of its powers independently of the Department of Transportation.

(g) The Authority shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Authority may determine.

(h) Upon completion of any bridge constructed pursuant to this Article, the Authority shall appoint an executive director, whose salary shall be fixed by the Authority, to serve at its pleasure. Prior to appointing an Executive Director, the Authority shall confer with the Governor regarding the proposed salary to be paid to the Executive Director. The Executive Director shall be responsible for the daily administration of bridges constructed, maintained, or operated pursuant to this Article. (1995, c. 485, s. 1.)

§ 136-89.162. Powers of the Authority.

(a) The Authority shall have all of the powers necessary to execute the provisions of this Article which shall include at least the following powers:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To establish, purchase, construct, operate, and regulate bridges and to own, lease, sell, or manage real or personal property.

(3) To charge and collect tolls and fees for the use of the bridges, for services rendered in the operation of the bridges, or to offset the costs of building the bridges. A toll shall not exceed ten dollars ($10.00) and an annual fee for a single vehicle to use the bridge during a year shall not exceed five hundred dollars ($500.00). The Authority shall report its schedule of tolls and fees to the Joint Legislative Transportation Oversight Committee.

(4) To rent, lease, purchase, acquire, own, encumber, or dispose of real or personal property.

(5) To establish, construct, purchase, maintain, equip, and operate any structure or facilities associated with a bridge.

(6) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(7) To apply for, accept, and administer loans and grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available.

(8) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Article.

(9) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Authority and to fix and pay their compensation from funds available to the Authority.

(10) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Authority and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.

(11) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(b) To execute the powers provided in subsection (a) of this section, the Authority shall determine its policies by majority vote of the members of the Authority present and voting, a quorum having been established. (1995, c. 485, s. 1.)

§ 136-89.163. Taxation of property of Authority.

Property owned by the Authority is exempt from taxation in accordance with Article V, Section 2 of the North Carolina Constitution. (1995, c. 485, s. 1.)

§ 136-89.164. Acquisition, disposition, or exchange of real property.

The Authority may acquire real property by purchase, negotiation, gift, or devise. When the Authority acquires real property owned by the State, the Secretary of the Department of Administration shall execute and deliver to the Authority a deed transferring fee simple title to the property to the Authority. (1995, c. 485, s. 1.)

§ 136-89.165. Cooperation by other State agencies.

All State officers and agencies shall render the services to the Authority within their respective functions as may be requested by the Authority. (1995, c. 485, s. 1.)

§ 136-89.166. Annual and quarterly reports.

The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the General Assembly, and the Department of Transportation. Each report shall be accompanied by an audit of its books and accounts. The costs of all audits, whether conducted by the State Auditor's staff or contracted with a private auditing firm, shall be paid from funds of the Authority.

The Authority shall submit quarterly reports to the Joint Legislative Transportation Oversight Committee. The reports shall summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Committee. (1995, c. 485, s. 1.)

§ 136-89.167. Dissolution.

Whenever the Authority, by resolution, determines that the purposes for which the Authority was formed have been substantially fulfilled, the Authority may declare itself dissolved. On the effective date of the resolution, the title to all property owned by the Authority at the time of the dissolution shall vest in the State, and possession of the property shall be delivered to the State. (1995, c. 485, s. 1.)

§§ 136-89.168 through 136-89.170: Reserved for future codification purposes.

Article 7.

Miscellaneous Provisions.

§ 136-90. Obstructing highways and roads misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 989, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-91. Placing glass, etc., or injurious obstructions in road.

Editor's Note. — Session Laws 1993, c. 539, s. 990, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-92. Obstructing highway drains prohibited.

It is unlawful to obstruct a drain along or leading from any public road in the State. A person who violates this section is responsible for an infraction. (1917, c. 253; C.S., s. 3791; 1993, c. 539, s. 991; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 163, s. 15.)

Editor's Note. — Session Laws 1993, c. 539, s. 991, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to offenses occurring on or after that date, substituted "prohibited" for "misdemeanor" in the catchline, and rewrote this section.

§ 136-93. Openings, structures, pipes, trees, and issuance of permits.

Editor's Note. — Session Laws 1993, c. 539, s. 992, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-94. Gates projecting over rights-of-way forbidden.

Editor's Note. — Session Laws 1993, c. 539, s. 993, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.

Local Modification. —

Town of Fuquay-Varina: 1995 (Reg. Sess., 1996), c. 613, s. 1.

Local Modification. —

For additional local modifications to this section, see the main volume.

CASE NOTES

Except Where Street Was Dedicated by Corporation Which Has Become Nonexistent. —

Where predecessors in title filed a declaration of withdrawal, they lost whatever sole rights to a twenty foot strip of land they may have had and became joint owners with plaintiff. Rawls v. Williford, 121 N.C. App. 762, 468 S.E.2d 460 (1996).

§ 136-98. Prohibition of local road taxes and bonds and construction of roads by local authorities; existing contracts.

(a) From and after the first day of July, 1931, no county or road district by authority of any public, public-local, or private act shall levy any taxes for the maintenance, improvement, reconstruction, or construction of any of the public roads in the various and several counties of the State, nor shall any county, through the board of commissioners thereof or the highway commission, nor shall any district or township highway commission, issue or sell or enter into any contract to issue or sell any bonds heretofore authorized to be issued and sold, but unissued and unsold, for the purpose of obtaining money with which to improve, maintain, reconstruct, or construct roads, except for the purpose of discharging obligations entered into prior to the ratification of this section, and all acts authorizing the board of county commissioners, the county highway commissions, district highway or township commissions, to issue and sell bonds for the purpose aforesaid, are hereby amended so as to conform to this section. No board of county commissioners nor county highway commission, nor district nor township highway commission from and after the passage of this section shall enter into any contract to build or construct roads in the various and several counties except for such projects as can be completed and paid for prior to July 1, 1931. All contracts heretofore entered into by any county through the board of county commissioners, county highway commission, and all contracts heretofore entered into by any district or township highway commission which shall be incomplete on July 1, 1931, shall be taken over by the Department of Transportation and completed by the Department of Transportation by the use of money and funds applicable thereto, by the terms of the said contracts. Nothing in this section or in any section of Chapter 145 of the Public Laws of 1931 that may appear in this Code shall be construed to prohibit the levying of taxes authorized by law for the payment of interest or principal on outstanding bonds or other evidences of debt lawfully issued. Any county or road district which has heretofore issued bonds or other evidences of debt by authority of law for road improvement purposes may refund said bonds or other evidences of debt under and pursuant to the laws of the State of North Carolina relative thereto.

(b) Nothing in this Article prohibits counties from establishing service districts for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes. (1931, c. 145, s. 35; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1995, c. 434, s. 2.)

Editor's Note. — Part 1, Article 16 of Chapter 153A, referred to in the section above, is codified as 153A-274 et seq.

Effect of Amendments. — The 1995 amendment, effective July 13, 1995, added the subsection (a) designation, and added subsection (b).

§ 136-102. Billboard obstructing view at entrance to school, church or public institution on public highway.

Editor's Note. — Session Laws 1993, c. 539, s. 994, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-102.4. Penalty for violation of §§ 136-102.2 and 136-102.3.

Editor's Note. — Session Laws 1993, c. 539, s. 995, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

Editor's Note. —

Session Laws 1993, c. 539, s. 996, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9.

Condemnation.

§ 136-103. Institution of action and deposit.

CASE NOTES

Use of Income Approach to Establish Value. — The decision in City of Statesville v. Cloaninger, 415 S.E.2d 111, 106 N.C. App. 10 (1992), appears to use the income approach to establishing property value when there are no comparable sales data and the income upon which the opinion of value is based is directly attributable to the land. DOT v. Fleming, 112 N.C. App. 580, 436 S.E.2d 407 (1993).

Applied in DOT v. Bollinger, 121 N.C. App. 606, 468 S.E.2d 796 (1996).

§ 136-108. Determination of issues other than damages.

CASE NOTES

Recording Not Required for Interests in Land Acquired Prior to July 1, 1959. — Section 47-27, which governs deeds for rights-of-way and easements, provides that the Department of Transportation (DOT) does not have to record such interests in land which were acquired prior to July 1, 1959. DOT v. Wolfe, 116 N.C. App. 655, 449 S.E.2d 11 (1994).

Section Does Not Infringe Right to Trial by Jury. —

Where a matter was called for hearing pursuant to this section in a condemnation action with no jury, this hearing did not infringe upon the landowner's right to a jury trial as provided by the North Carolina and United States Constitutions. DOT v. Wolfe, 116 N.C. App. 655, 449 S.E.2d 11 (1994).

Review on Appeal of Arbitrary and Capricious Conduct. — If condemnation proceedings are subject to review due to allegations of arbitrary and capricious conduct or abuse of discretion, and if the court finds safety to be of legitimate concern, the trial judge must make a finding of fact on that issue. Absent such a ruling, an appellate court cannot properly review the trial court's decision as to whether or not Department of Transportation's actions were arbitrary and capricious. DOT v. Overton, 111 N.C. App. 857, 433 S.E.2d 471 (1993), discretionary review improvidently granted, 336 N.C. 598, 444 S.E.2d 448 (1994).

§ 136-109. Appointment of commissioners.

CASE NOTES

Cited in Ferrell v. DOT, 334 N.C. 650, 435 S.E.2d 309 (1993).

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.

CASE NOTES

Cited in Adams Outdoor Adv. v. North Carolina DOT, 112 N.C. App. 120, 434 S.E.2d 666 (1993); Southern Furn. Co. of Conover, Inc. v. DOT, 122 N.C. App. 113, 468 S.E.2d 523 (1996).

§ 136-112. Measure of damages.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in Ferrell v. DOT, 334 N.C. 650, 435 S.E.2d 309 (1993); Guilford County v. Kane, 114 N.C. App. 243, 441 S.E.2d 556 (1994).

ARTICLE 10.

Preservation, etc., of Scenic Beauty of Areas along Highways.

§ 136-125. Regulation of scenic easements.

Editor's Note. — Session Laws 1993, c. 539, s. 997, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

CASE NOTES

Cited in Whiteco Indus., Inc. v. Harrelson, 111 N.C. App. 815, 434 S.E.2d 229 (1993); Whiteco Indus., Inc. v. Harrington, 111 N.C. App. 839, 434 S.E.2d 234 (1993).

§ 136-129. Limitations of outdoor advertising devices.

Local Modification. — Buncombe and Surry Counties: 1993 (Reg. Sess., 1994), c. 559, ss. 1, 2.

CASE NOTES

Advertising in Industrial or Commercial Zones. — Outdoor advertising in conformity with the rules and regulations promulgated by North Carolina Department of Transportation is permitted in areas which are zoned industrial or commercial under authority of State law. Naegele Outdoor Adv., Inc. v. Hunt, 121 N.C. App. 205, 465 S.E.2d 549 (1996).

Having zoned property as a highway commercial zone under authority of State law and in accordance with a comprehensive plan, the trial court properly concluded that the Secretary's revocation of the permits exceeded his authority under the statutory mandate of subsection (4) which expressly allows advertising in areas which are zoned industrial or commercial under authority of State law. Naegele Outdoor Adv., Inc. v. Hunt, 121 N.C. App. 205, 465 S.E.2d 549 (1996).

§ 136-131.1. (Expires June 30, 1998 — See editor's note) Just compensation required for the removal of billboards on federal-aid primary highways by local authorities.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 725, s. 1, amended Session Laws 1981, c. 1147, s. 2, as amended by Session Laws 1983, c. 318, by Session Laws 1987, c. 1024, and by Session Laws 1989, c. 166, s. 1, to change the expiration date of this section from June 30, 1994, to June 30, 1998. This amendment became effective July 11, 1994, after the June 30, 1994 expiration date.

CASE NOTES

Cited in Capital Outdoor Adv., Inc. v. City of Raleigh, 337 N.C. 150, 446 S.E.2d 289, rehearing denied, 337 N.C. 807, 449 S.E.2d 566 (1994).

§ 136-134.1. Judicial review.

CASE NOTES

Superior Court Jurisdiction. — When permit holder petitioned the superior court for review of Department of Transportation revocation of permit for highway sign, this gave the superior court jurisdiction to determine the whole case including the taxing of costs including section providing for attorney's fees to be taxed as costs in some instances. Able Outdoor, Inc. v. Harrelson, 341 N.C. 167, 459 S.E.2d 626 (1995).

§ 136-135. Enforcement provisions.

Editor's Note. — Session Laws 1993, c. 539, s. 998, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-140.1. Adopt-A-Highway.

(a) Notwithstanding any other provision of this Article, the Department of Transportation may permit individuals or groups participating in its Adopt-A-Highway Program access to controlled access facilities for the purpose of removing litter from the right-of-way. Acknowledgment of participation in the program may be indicated by appropriate signs that shall be owned, controlled, and erected by the Department of Transportation. The size, style, specifications, and content of the signs shall be determined in the sole discretion of the Department of Transportation. The Department of Transportation may issue rules and policies necessary to administer the program.

(b) Adopt-A-Highway participants may use contract services to clean the roadside of the sections of highway the participants have adopted only in accordance with the rules and policies issued by the Department of Transportation. (1995, c. 324, s. 18.1.)

Editor's Note. — Session Laws 1995, c. 324, s. 28.5, made this section effective July 1, 1995.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Article 12.

Junkyard Control Act.

§ 136-144. Restrictions as to location of junkyards.

CASE NOTES

Cited in Naegele Outdoor Adv., Inc. v. Harrelson, 112 N.C. App. 98, 434 S.E.2d 244 (1993).

§ 136-145. Enforcement provisions.

Editor's Note. — Session Laws 1993, c. 539, s. 999, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-147. Screening of junkyards lawfully in existence.

CASE NOTES

Cited in Naegele Outdoor Adv., Inc. v. Harrelson, 112 N.C. App. 98, 434 S.E.2d 244 (1993).

ARTICLE 14.

North Carolina Highway Trust Fund.

§ 136-175. (For contingent repeal see note) Definitions.

Editor's Note. — Session Laws 1989, c. 692, s. 8.4, as amended by Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, provides that when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumulated to pay the contracts, which contingency is not expected to occur until some years after the date of enactment, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State. Contingent upon certification of a favorable vote on the bonds in the State Highway Bond Act of 1996, the proceeds of bonds and notes issued pursuant to the State Highway Bond Act of 1996 shall not be included as revenues accumulated to pay the contracts for the projects specified in this Article. This Article shall be repealed effective on the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case, the repeal will become effective on the first day of the second calendar quarter following the date the letter is sent, except that, contingent upon the certification of a favorable vote on the bonds in the State Highway Bond Act of 1996, the repeal will not become effective until the State Treasurer certifies by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State that all of the bonds and notes issues pursuant to the State Highway Bond Act of 1996 have been retired or provision for their retirement has been made.

§ 136-176. (For contingent repeal see editor's note) Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.

(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

(1) Motor fuel, alternative fuel, and road tax revenue deposited in the Fund under G.S. 105-449.125, 105-449.134, and 105-449.43, respectively.

(2) Motor vehicle use tax deposited in the Fund under G.S. 105-187.9.

(3) Revenue from the certificate of title fee and other fees payable under G.S. 20-85.

(4) Revenue available from the retirement of refunding bonds issued to repay highway construction bonds and deposited in the Fund under G.S. 136-183.

(5) Interest and income earned by the Fund.

(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and one-half percent (4.5%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to

plan, design, and construct the projects of the Intrastate System described in G.S. 136-179.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180.

(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182.

(b) **(For contingent amendment, see editor's note)** Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and one-half percent (4.5%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct the projects of the Intrastate System described in G.S. 136-179 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-80 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops.

(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction.

The Department must administer funds allocated under subdivisions (1), (2), and (4) of this subsection in a manner that ensures that sufficient funds are available to make the debt service payments on bonds issued under the State Highway Bond Act of 1996 as they become due.

(c) If funds are received under 23 U.S.C. Chapter 1, Federal-Aid Highways, for a project for which funds in the Trust Fund may be used, the amount of federal funds received plus the amount of any funds from the Highway Fund that were used to match the federal funds may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program.

(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143-28.1 only for the two bienniums following the year in which the contract is let. (1989, c. 692, s. 1.1; c. 770, ss. 68.2, 74.6; 1989 (Reg. Sess., 1990), c. 1024, s. 46(a), (b); 1991, c. 193, s. 9; c. 280, s. 1; c. 689, s. 62; 1995, c. 390, s. 27; 1995 (Reg. Sess., 1996), c. 590, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 19.4(a).)

Editor's Note. —

For contingent repeal, see editor's note under § 136-175.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 17, provides that c. 590, s. 6 shall become effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State as provided in Section 9 of that act.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 1, provides that this act shall be known and may be cited as the State Highway Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 13(d), is a severability clause.

Session Laws 1995 (Reg. Sess., 1996), c. 590, the State Highway Bond Act of 1996, provides that the purpose of the act is to provide for the issuance of general obligation bonds of the State for the purpose of providing funds for constructing, improving, and relocating roads, bridges, tunnels, and other highway facilities; provides for authorization of bonds and notes and appropriation, use, and allocation of their proceeds; provides that the question of the issuance of these bonds shall be submitted to the voters of the State at the general election in November of 1996; and if approved, provides for the issuance, repayment, investment, and other properties of the bond.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, in subdivision (a)(1) substituted "alternative fuel" for "special fuel", and "105-449.125, 105-449.134" for "105-445, 105-449.16".

Session Laws 1996, Second Extra Session, c. 18, s. 19.4(a), effective July 1, 1996, substituted "two bienniums" for "biennium" in subsection (d).

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 6, contingent upon certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State, as provided in that act, would add "and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects" at the end of subdivision (b)(1); would add "and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops" at the end of subdivision (b)(2); would add "and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction" at the end of subdivision (b)(4); and would add the last sentence of subsection (b). See Editor's Note for contingent effective date.

§ 136-177.1. (For contingent effective date, see editor's note) Requirement to use federal funds for Intrastate System projects and urban loops.

For fiscal years 1996-97 through 2010-11, the Department of Transportation must use ten million dollars ($10,000,000) of the funds it receives each year under 23 U.S.C. Chapter 1, Federal-Aid Highways, to construct the Intrastate System projects described in G.S. 136-179. For fiscal years 1996-97 through 2011-12, the Department of Transportation must use ten million dollars ($10,000,000) of the funds it receives each year under 23 U.S.C. Chapter 1, Federal-Aid Highways, to construct the urban loops described in G.S. 136-180. G.S. 136-176(c) does not apply to federal funds required to be used under this section for Intrastate System projects or urban loops, nor does it apply to any funds from the Highway Fund that were used to match these federal funds. (1995 (Reg. Sess., 1996), c. 590, s. 15.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 17, provides that c. 590, s. 15, which enacted this section, shall become effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State as provided in Section 9 of that act.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 1, provides that this act shall be known and may be cited as the State Highway Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, the State Highway Bond Act of 1996, provides that the purpose of the act is to provide for the issuance of general obligation bonds of the State for the purpose of providing funds for constructing, improving, and relocating roads, bridges, tunnels, and other highway facilities; provides for authorization of bonds and notes and appropriation, use, and allocation of their proceeds; provides that the question of the issuance of these bonds shall be submitted to the voters of the State at the general election in November of 1996; and if approved, provides for the issuance, repayment, investment, and other properties of the bond.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 13(d), is a severability clause.

§ 136-180.1. Proposed Durham Northern loop.

The Department of Transportation shall notify the owners of all property that is within a corridor located in Durham County and is being considered as a possible alignment of the proposed Durham Northern loop of at least one informational workshop, if one is held, and any public hearings on that urban loop. These notifications shall be made by first-class mail and shall be made no less than 30 days prior to the scheduled workshop or public hearing. Prior to a decision on the proposed Durham Northern loop, the Department of Transportation shall consider all alternatives advanced by interested parties including improvements to existing corridors and consider neighborhood growth, economic development patterns and trends, the best protection for the environment, and limitation on encroachment upon State parks. A public report shall be made by the Department of Transportation of its findings and the basis for its decision. (1995 (Reg. Sess., 1996), c. 590, s. 14.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 17 provides that this section is effective upon ratification. The Act was ratified June 20, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 1, provides that this act shall be known and may be cited as the State Highway Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, the State Highway Bond Act of 1996, provides that the purpose of the act is to provide for the issuance of general obligation bonds of the State for the purpose of providing funds for constructing, improving, and relocating roads, bridges, tunnels, and other highway facilities; provides for authorization of bonds and notes and appropriation, use, and allocation of their proceeds; provides that the question of the issuance of these bonds shall be submitted to the voters of the State at the general election in November of 1996; and if approved, provides for the issuance, repayment, investment, and other properties of the bond.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 13(d), is a severability clause.

§ 136-185. (For contingent effective date, see editor's note) Maintenance reserve created in certain circumstances.

If the Highway Trust Fund has not terminated but all contracts for the projects of the Intrastate System described in G.S. 136-179 have been let and the amount collected and allocated for the Intrastate System is enough to pay the contracts and retire any bonds issued under the State Highway Bond Act of 1996 for projects of the Intrastate System, all subsequent allocations of revenue for the Intrastate System shall be credited to a reserve account within the Trust Fund. Revenue in this reserve may be used only to maintain the projects of the Intrastate System.

If the Highway Trust Fund has not terminated but all contracts for the urban loops described in G.S. 136-180 have been let and the amount collected and allocated for the urban loops is enough to pay the contracts and retire any bonds issued under the State Highway Bond Act of 1996 for the urban loops, then all subsequent allocations of revenue for the urban loops shall be credited to a reserve account within the Trust Fund. Revenue in this reserve may be used only to maintain the urban loops. (1995 (Reg. Sess., 1996), c. 590, s. 16.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 17, provides that c. 590, s. 16, which enacted this section, shall become effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State as provided in Section 9 of that act.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 1, provides that this act shall be known and may be cited as the State Highway Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 590, the State Highway Bond Act of 1996, provides that the purpose of the act is to provide for the issuance of general obligation bonds of the State for the purpose of providing funds for constructing, improving, and relocating roads, bridges, tunnels, and other highway facilities; provides for authorization of bonds and notes and appropriation, use, and allocation of their proceeds; provides that the question of the issuance of these bonds shall be submitted to the voters of the State at the general election in November of 1996; and if approved, provides for the issuance, repayment, investment, and other properties of the bond.

Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 13(d), is a severability clause.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1996

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1996 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina

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